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No. 7307

Vol 1842

United States
Circuit Court of Appeals
For the Ninth Circuit.

STANLEY S. ANDERSON,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of the Record

Upon Petition to Review an Order of the United States Board of Tax Appeals.

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No. 7307

United States
Circuit Court of Appeals
For the Ninth Circuit.

STANLEY S. ANDERSON,
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COMMISSIONER OF INTERNAL REVENUE,
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APPEARANCES:

For Taxpayer:

E. P. ADAMS, C. P. A.,
JOSEPH D. PEELER, Esq.,
WARD LOVELESS, Esq.

For Comm'r.:

R. W. WILSON, Esq.,
O. W. SWECKER, Esq.

Docket No. 42053

STANLEY S. ANDERSON,
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES.

1928

Dec. 24—Petition received and filed. Taxpayer notified. (Fee paid)

" 27—Copy of petition served on General Counsel.

1929

Jan. 30—Answer filed by General Counsel.

Feb. 19—Copy of answer served on Taxpayer. Circuit Calendar.

1932

Apr. 14—Hearing set for Los Angeles, California beginning June 6, 1932.

Jun. 14—Hearing had before C. P. Smith, Div. 5 on merits. Submitted. Amended petition

received and served. Briefs due 60 days from date. Reply 30 days after. Board not to serve. Calendar called June 6, 1932.

Jul. 15—Motion for extension of 60 days after receipt of transcript to file brief, filed by taxpayer. 7/16/32 granted to Oct. 1, 1932.

Aug. 26—Order that parties be granted an extension to Oct. 15, 1932, to file briefs entered.

Oct. 11—Motion for extension of 40 days after receipt of transcript to file brief filed by General Counsel. 10/12/32 granted to December 15, 1932.

" 15—Brief filed by taxpayer.

Dec. 14—Motion for extension of 40 days after receipt of transcript to file brief filed by General Counsel. 12/19/32 granted.

" 30—Order extending time to March 1, 1933 to file respondent's brief, entered.

1933

Mar. 1—Brief filed by General Counsel.

May 6—Transcript of hearing of June 14, 1932 filed.

" 24—Findings of fact and opinion rendered, C. P. Smith, Div. 5. Judgment will be entered for the respondent.

" 26—Decision entered, Charles P. Smith, Div. 5.

Jun. 26—Motion to fix amount of bond at not more than $47,000 filed by taxpayer.

" 27—Order fixing amount of bond at $47,000 entered.

Aug. 17—Petition for review by U. S. Circuit Court of Appeals (9) with assignments of error filed by taxpayer.

1933

Aug. 17—Proof of service filed by taxpayer.

Sep. 7—Notice of appearance of Ward Loveless, attorney for taxpayer filed.

" 7—Statement of evidence lodged. [1*]

" 7—Notice of lodgment of statement of evidence for hearing Sept. 20, 1933.

" 7—Praecipe of record filed.

" 7—Proof of service of praecipe filed.

" 16—Objection and exception to praecipe filed by General Counsel.

" 16—Objection and exception to statement of evidence filed by General Counsel.

" 20—Hearing had before Mr. Trammell, Div. 2 on approval of statement of evidence. Referred to Mr. Smith.

" 21—Amended praecipe filed by taxpayer.

" 21—Proof of service of amended praecipe filed.

" 22—Agreed statement of evidence approved and ordered filed. [2]

United States Board of Tax Appeals

Docket No. 42053

STANLEY S. ANDERSON,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION.

The above named petitioner hereby petitions for

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*Page numbering appearing at the foot of page of original certified Transcript of Record.

a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency IT:AR:B-4 dated November 1, 1928, and as a basis of his proceeding alleges as follows:

1. The petitioner is an individual, with his principal office at 1341 Benedict Canyon Road, Beverly Hills, California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on November 1, 1928.

3. The taxes in controversy are income and profits taxes for the calendar year 1924 and 1925 and for $28,789.20. [3]

4. The determination of tax set forth in the said notice of the deficiency is based upon the following errors:

a. Increase in taxable income of the petitioner by including therein income of Marguerite S. Anderson, his wife, from real estate ventures.

b. Failure for the year 1925 to determine and give effect to capital gain limitation for portion of profits realized from real estate ventures.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

a. The taxpayer acting jointly for himself and Marguerite S. Anderson, his wife, purchased interests in real estate syndicates or ventures, such interests being at time of such purchase and at all times subsequent thereto 50% Stanley S. Anderson and 50% Marguerite S. Anderson, and were as follows:

Christie-Anderson-Janss	1/4
Christie Film-Janss	1/6

The syndicates or ventures are described in summary as follows:

Christie-Anderson-Janss:

The Janss Investment Company was the owner of 120.5 acres, more or less, in subdivisions 3 and 4 of the [4] Rancho San Jose de Buenos Aires situated in the vicinity of what is now known as Westwood. On September 1, 1923 an agreement was entered into between the Janss Investment Company, Charles H. Christie and this taxpayer whereby a one-half interest in said 120.5 acres, more or less, was sold to Charles H. Christie and this taxpayer, representing himself and Marguerite S. Anderson, his wife, for a consideration of $180,-750.00, payable as follows:

September 1, 1923	$10,000.00
October 1, 1923	10,000.00
October 14, 1923	40,250.00
Two notes payable in 3 years, interest at 7% per annum, of $60,250.00 each	120,500.00
Total	$180,750.00

This taxpayer on his own behalf and on behalf of Marguerite S. Anderson made payments from joint funds as follows:

September 5, 1923	$ 5,000.00
October 1, 1923	20,125.00
November 2, 1923	5,000.00
September 6, 1924	941.75
Total	$ 31,066.75

And as of September 1, 1923 said taxpayer and Marguerite S. Anderson executed a note payable [5] to Holmby Corporation, in the sum of $62,020.00, maturity on or before three years, with interest at 7% payable semiannually.

On September 10, 1923, a selling agent's agreement was made between the Janss Investment Company, Charles H. Christie and the taxpayer as owners and the Janss Realty & Finance Company, as agent. Under this agreement the agent should subdivide, improve and sell the property above referred to.

Christie Film-Janss.

As of September 1, 1923, Charles H. Christie entered into a purchase agreement with the Janss Investment Company for 107 acres, more or less, situated in the Rancho San Jose de Buenos Aires, for a consideration of $321,000.00, and Charles H. Christie in turn agreed to sell to the taxpayer a one fourth interest in said property, whereupon this taxpayer became a party to said agreement.

The terms of said purchase contract were as follows:

September 1, 1923	$ 25,000.00
October 1, 1923	25,000.00
October 14, 1923	57,000.00
Notes payable on or before 3 years, interest at 7%	214,000.00
Total	$321,000.00

[6]

The taxpayer on his own behalf and on behalf of Marguerite S. Anderson made from joint funds cash payments as follows:

September 5, 1923	$ 6,250.00
October 1, 1923	6,250.00
October 14, 1923	14,250.00
Total	$26,750.00

And as of September 1, 1923, this taxpayer and Marguerite S. Anderson assumed one fourth of the note and mortgage of $207,250.00. As of November 7, 1923, the Janss Investment Company repurchased a one third interest in 66.429 acres of this property, 37.837 acres having been set aside as a studio site by Charles H. Christie and this taxpayer, the difference between the total of 107 acres as set out in purchase agreement arising from actual survey of tract, showing a total of 104.266 acres, and the sales price was adjusted accordingly.
This property was also to be sublivided, improved and sold as in the case of Christie-Anderson-Janss.

As contemplated under the selling agent's agreement the properties were subdivided, improved and placed on sale by the Janss Realty and Finance Company, and beginning with August, 1924 monthly statements of the [7] selling agent's accounts were furnished the owners, showing status of the properties. On the selling agent's books the owners were charged with the notes issued on purchase price of the properties and off-setting liability to Holmby Corporation, and as interest accrued on these notes, taxes were paid, etc., charges were made to these personal accounts.

At the end of the year 1924 an account was opened for each owner to which was credited such owner's proportion of the realized profit from the installment sales. The status of these accounts at the end of the taxable years were as follows:

Christie-Anderson-Janss:

Year	Debit Personal Accounts	Credit Realized Profit a/c
1924	$71,082.04	$44,758.38
1925	73,007.52	90,520.53

Christie Film-Janss:

Year	Debit Personal Accounts	Credit Realized Profit a/c
1924	$43,487.21	$20,618.56
1925	59,390.09	36,397.88

As of December 31, 1925 the taxpayer and Marguerite S. Anderson had received in cash from these syndicates $15,000.00, $5,000.00 of which being in 1924 and [8] $10,000.00 in 1925. Prior to the year 1925 the taxpayer had not kept regular books of account, but beginning with the first of the year 1925 books were opened and maintained to this date, such books showing all cash receipts and payments. In the preparation of income tax returns for the year 1925 50% of total cash received from these syndicates was reported as income by each the petitioner and Marguerite S. Anderson and the same procedure followed for the years 1926 and 1927, these amounts being as follows:

1925	$10,000.00
1926	54,492.74
1927	89,000.00

In the audit of the income tax returns of the petitioner and Marguerite S. Anderson, the respondent has disregarded the separate interests of the petitioner and Marguerite S. Anderson and proposed to assert an additional tax against the petitioner based on the inclusion in his taxable income that of Marguerite S. Anderson derived from such real estate ventures.

b. The profits realized from the real estate ventures in part accrued from sale of property held for more than two years, and in the adjustment proposed by the [9] Respondent such profits

have not been segregated and tax computed thereon at 12½% limitation provided by law.

6. The petitioner prays for relief from the deficiency asserted by the respondent on the following and each of the following particulars:

(a) Exclusion from his taxable income of income of Marguerite S. Anderson.

(b) Determination of tax at capital gain rate of 12½% on income from real estate ventures on property sold which had been held for over two years at date of sale.

WHEREFORE, the petitioner prays that this Board may hear and redetermine the deficiency therein alleged.

STANLEY S. ANDERSON
Petitioner
1341 Benedict Canyon Road
Beverly Hills, California. [10]

State of California,
County of Los Angeles.—ss.

Stanley S. Anderson, being duly sworn, says that he is the petitioner above named: that he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be upon information and belief, and those facts he believes to be true.

STANLEY S. ANDERSON.

Subscribed and sworn to before me this 20th day of December, 1928.

[Seal] LEONARD GARBETT,

Notary Public in and for the County of Los Angeles, State of California.

My Commission expires August 1, 19

[Endorsed]: United States Board of Tax Appeals. Filed Dec. 24, 1928. [11]

[Title of Court and Cause.]

ANSWER.

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition filed by above-named taxpayer, admits and denies as follows:

1. Admits the averments in paragraph 1 of the petition.

2. Admits the averments in paragraph 2 of the petition.

3. Admits the averments in paragraph 3 of the petition.

4. Denies the errors alleged in paragraph 4 of the petition.

5. Admits that on September 10, 1923, a selling agent's agreement was made between the Janss Investment Company, Charles H. Christie and the petitioner as owners and the Janss Realty & Finance Company, as agent, whereby the said agent was to subdivide, improve and sell certain property; ad-

mits that as of September 1, 1923, Charles H. Christie entered into a purchase agreement with the Janss Investment Company for 107 acres, more or less, situated in the Rancho San Jose de Buenos Aires for a consideration of $321,000.00, and that Charles H. Christie in turn agreed to sell to the petitioner a one fourth interest [12] in said property, whereupon the petitioner became a party to said agreement; that the terms of said purchase contract were as set forth on page 4 of the petition; denies that in any of the transactions recited in the petition, the petitioner acted on behalf of Marguerite S. Anderson, and denies that the said Marguerite S. Anderson assumed one fourth of the note and mortgage of $207,250.00; denies the averments contained in paragraph 5-b; lacks sufficient information to form an opinion regarding the remaining averments contained in paragraph 5 and therefore denies said remaining averments and will demand proof thereof upon the hearing of this appeal.

WHEREFORE, it is prayed that the taxpayer's petition be denied.

(Signed) C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

Of Counsel:
HAROLD ALLEN,
Special Attorney,
Bureau of Internal Revenue.

[Endorsed]: United States Board of Tax Appeals. Filed Jun. 30, 1929. [13]

[Title of Court and Cause.]

AMENDED PETITION.

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT:AR:B-4:MKR-60D) dated November 1, 1928, and as a basis of his proceeding states as follows:

1. The petitioner is an individual with residence at 1341 Benedict Canyon Drive, Beverly Hills, California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on November 1, 1928.

3. The taxes in controversy are income taxes for the calendar years 1924 and 1925, and for approximately $28,789.20.

4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

(a) The respondent erred in including in taxable net income of the petitioner for the calendar year 1924, the following items of income which belonged and were taxable to his wife, Marguerite S. Anderson: [14]

Interest from Notes, Mortgages and Bank Deposits—	$ 1,698.63
Rents from real property—	9,876.18
Profits on sales of stocks and real property—	6,768.19
Dividends from stocks—	2,000.00

Profit from joint ventures in real estate— 29,506.56
Capital net gain— 16,747.00

(b) The respondent erred in including in the taxable net income of the petitioner for the calendar year 1924, the following items of income which belonged and were taxable to his wife, Marguerite S. Anderson:

Interest from Notes, Mortgages and Bank Deposits— $ 964.78
Rents from real property— 5,342.80
Dividends on stocks— 4,751.83
Profit from joint ventures in real estate— 28,541.55
Loss from joint ventures in real estate— **2,162.89**

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) Petitioner married his wife, Marguerite Slattery, in 1914. At the time of their marriage petitioner owned no property except his personal belongings. His wife received as a wedding present from her father a check for $2,500, as her separate property.

(b) At various times thereafter, petitioner's [15] wife, Marguerite S. Anderson, received from her father gifts of cash in amounts of from $100.00 to $5,000 each, totalling approximately $20,000 prior to January 1, 1920.

(c) At the time of his marriage and until he went abroad during the World War, the peti-

tioner worked as Assistant Manager of the Beverly Hills Hotel, Beverly Hills, California, on a salary of $300.00 per month. Said hotel was owned by petitioner's mother, Mrs. M. J. Anderson.

(d) Petitioner's wife, Marguerite S. Anderson, acted as hostess and assistant to the petitioner and devoted considerable time and effort to the interests of said hotel.

(e) Early in 1916, petitioner's wife was informed by a guest of the hotel, John B. Joyce, that the latter was in the market for a residential estate. She communicated this fact to the petitioner and they agreed to work together to consummate such a sale, one-half of any commission received to be her personal property. As a result of their joint efforts, the sale was effected and petitioner and his wife received a commission in the amount of $10,000 in March, 1916, which was deposited in their joint bank account.

(f) Upon the receipt of said $10,000, petitioner agreed with his wife that $5,000 belonged to her as her separate property, but recommended that they invest their [16] funds jointly in the purchase of certain vacant lots in Beverly Hills, California. After some discussion, his wife agreed and said lots were purchased as follows:

(1) Lot 1 in Block 3 of Beverly from the Rodeo Land & Water Co., deed dated April 14, 1916, recorded July 26, 1916.

(2) Lot 23 in Block 1 of Beverly, from Mary MacBean and Isabella MacBean, deed dated April 14, 1916, recorded July 26, 1916.

(3) Lot 24 in Block 1 of Beverly, from O. Franklin Thayer and Enora M. Thayer, deed dated April 15, 1916, recorded July 26, 1916.

(4) Lots 1 and 2 in Block 2 of Beverly, from Mary C. Taylor and G. L. Taylor, deed dated May 5, 1916, recorded July 26, 1916.

(g) The total cost of said lots was in excess of $12,000, and was paid for out of the following funds:

(1) $5,000 from petitioner's share of commmision.

(2) $5,000 from his wife's share of commission.

(3) Remainder from separate funds of his wife given to her by her father.

(h) Upon the purchase of said lots the petitioner and his wife agreed that they should own said lots and all income from or accretions thereto as tenants in common.

(i) While petitioner was abroad during the World War, his wife remained with his mother and assisted her in the management of the Beverly Hills Hotel. Prior to petitioner's return to Beverly Hills in 1919, his wife made an arrangement with his mother whereby petitioner and his wife were to assume the full active management of the hotel and were to receive as compensation therefor, [17] a salary of $3,000 per year and,

in addition, 50 per cent of the net income of the hotel for each calendar year. Petitioner agreed with his wife that one-half of said compensation was to be treated as earned by her and should constitute her separate property.

(j) During the calendar years 1920 to 1923, inclusive, petitioner and his wife received as compensation for their services to the Beverly Hills Hotel the following amounts:

Year	Salary	Participation in Profits
1920	$3,000	$56,274.79
1921	3,000	15,713.92
1922	3,000	25,773.09
1923	3,000	41,710.08
Totals	$12,000	$139,471.88

(k) As said amounts were received, petitioner and his wife consulted and agreed as to the investment thereof. A considerable portion of said amounts was expended in improvements on the vacant lots purchased by them in 1916. Other amounts were expended in the purchase of stock and other real estate.

(l) It was expressly agreed by and between petitioner and his wife that all of the properties and improvements should be held by them as joint tenants, and that her one-half interest therein should constitute her separate property.

(m) As a matter of business convenience, petitioner took title to all of said properties,

including the [18] vacant lots purchased in 1916, in the name of Stanley S. Anderson, without, however, informing his wife of said fact. Petitioner understood and intended that he would act as trustee for his wife to the extent of her one-half separate property interest in said properties.

(n) On or about May 25, 1932, petitioner informed his wife that said properties were held in the name of Stanley S. Anderson, and not in their joint names. She then demanded that the legal title be amended to correspond with the real situation. As a result, on or about June 4, 1932, a written agreement was executed by petitioner and his wife, wherein they acknowledged that each had a one-half separate property interest as tenants in common, in all property held by either of them. Deeds of transfer have been executed and recorded by petitioner, transferring to his wife, Marguerite S. Anderson, legal title to an undivided one-half interest to all the real estate theretofore standing in his sole name.

(o) As of September 1, 1923, an agreement was entered into whereby the Janss Investment Co. agreed to convey to Charles H. Christie and Stanley S. Anderson, each, an undivided one-fourth interest in a tract of land consisting of approximately 120.5 acres, for a total consideration of $90,375.00 each. Petitioner paid in cash $30,125.00 during the calendar year 1923 and petitioner and his wife, Marguerite S. Ander-

son, [19] executed and delivered their joint and several note to the Holmby Corporation, in the amount of $62,020.00, dated September 1, 1923, and payable on or before September 1, 1926.

(p) As of September 1, 1923, the Janss Investment Co. entered into an agreement whereby it was to convey to Charles H. Christie a tract of approximately 107 acres for a total consideration of $321,000, of which $107,000 was to be paid in cash with a three year mortgage note for the balance.

(q) As of September 10, 1923, an agreement was entered into whereby Charles H. Christie agreed to sell to Stanley S. Anderson a one-fourth interest in said property or contract, for one-fourth of the purchase price. During the calendar year 1923, the petitioner paid on said account $26,750.00 in cash.

(r) As of November 7, 1923, the Janss Investment Co. repurchased a one-third interest in 66.429 acres of this tract. Agreements were entered into by the Janss Investment Co., Charles H. Christie and Stanley S. Anderson, whereby the above properties were to be subdivided and sold, with the Janss Realty & Finance Co., as agent.

(s) In entering into the above agreements, it was expressly understood between petitioner and his wife that he was acting in their joint interest and that she was to own as tenant in common and as her separate [20] property one-

half of the interests so acquired by Stanley S. Anderson and was to share equally with him in all losses and/or profits realized therefrom.

(t) In pursuance of this agreement, the petitioner executed and delivered to his wife, Marguerite S. Anderson, under date of September 5, 1923, a letter setting forth their understanding that she owned a one-half interest in these joint ventures, and that she assumed liability for her share of all payments. Said Marguerite S. Anderson agreed thereto and delivered to an officer of the Janss Investment Co. an executed copy of said agreement. The other member of the joint ventures, Charles H. Christie, also was informed of the fact that said Marguerite S. Anderson had an undivided one-half interest in the contracts and properties so taken in the name of Stanley S. Anderson.

(u) Petitioner and his wife, Marguerite S. Anderson, filed separate income tax returns for the calendar years 1924 and 1925, on the basis of cash receipts and disbursements.

(v) During the calendar year 1924 the net profits of petitioner and his wife from these joint ventures, as determined by the respondent, was $59,013.13, none of which was paid in cash to either of them, or reported by them on their respective returns. The respondent has erroneously added to petitioner's taxable net income for 1924 the entire amount of $59,013.13, despite the fact [21] that one-half thereof, or $29,506.06, was the separate income of and was taxable to Marguerite S. Anderson.

(w) During the taxable year 1925, the net profits of petitioner and his wife from these joint ventures, as determined by respondent, was $57,083.10, of which $10,000 was paid in cash to them. Each reported $5,000 as taxable income from these joint ventures on their respective returns for the calendar year 1925. The respondent has erroneously included the entire amount of $57,083.10 in the taxable net income of petitioner for 1925, despite the fact that one-half thereof, or $28,541.55 was the separate income of, and was taxable to, said Marguerite S. Anderson.

(x) All the properties owned by petitioner and his wife during the taxable years 1924 and 1925 belonged equally, half and half, to them as their separate property, as tenants in common.

WHEREFORE, the petitioner prays that this Board may hear the proceeding and determine that no deficiency is due by the petitioner for either of the taxable years 1924 and 1925.

JOSEPH D. PEELER
819 Title Insurance Building,
Los Angeles, California
MELVIN D. WILSON
819 Title Insurance Building,
Los Angeles, California. [22]
E. P. ADAMS, C. P. A.,
Central Building,
Los Angeles, California.
Counsel for Petitioner.

State of California
County of Los Angeles—ss.

Stanley S. Anderson, being duly sworn, says that he is the petitioner above named; that he has read the foregoing petition and is familiar with the statements contained therein, and that the facts stated are true.

STANLEY S. ANDERSON

Subscribed and sworn to before me this 9th day of June, 1932.

[Seal] MILDRED K. ROGERS

Notary Public in and for the County of Los Angeles, State of California. [23]

(461M) EXHIBIT A

TREASURY DEPARTMENT

Washington

Office of Nov. 1, 1928.

Commissioner of Internal Revenue
Address Reply to Commissioner of
Internal Revenue and Refer To

Mr. Stanley S. Anderson,
907 Beverly Drive,
Beverly Hills, California.

Sir:

In accordance with Section 274 of the Revenue Act of 1926 you are advised that the determination of your tax liability for the years 1924 and 1925 discloses a deficiency of $28,789.20 as shown in the attached statement.

The section of the law above mentioned allows you to petition the United States Board of Tax Appeals within sixty days from the date of the mailing of this letter for a redetermination of your tax liability. However, if you acquiesce in this determination, you are requested to execute the enclosed Form 866 and forward both original and duplicate to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7.

Respectfully,
D. H. BLAIR,
Commissioner.
By C. B. ALLEN
Deputy Commissioner.

Enclosures:
Statement
Form 866
Form 882 [24]

STATEMENT

IT:AR:B-4
MKR-60D Nov. 1, 1928.

In re: Mr. Stanley S. Anderson,
907 Beverly Drive,
Beverly Hills, California.

Year	Deficiency in Tax
1924	$19,036.61
1925	9,752.59
Total	$28,789.20

Reference is made to the report of the Internal Revenue Agent in Charge in San Francisco, Cali-

fornia, and to your protest submitted under date of March 31, 1928.

Careful consideration has been accorded your protest in connection with the agent's findings and the report of the conference held in the office of the Agent in Charge. The adjustments recommended by the Agent as a result of the conference have been approved in this office with the following exception:

Reference is made to the disallowance by the revenue agent of a deduction on your 1924 return in the amount of $3,000.00, representing traveling expenses. Information on file indicates that this item was previously considered by this office and that you were advised in office letter dated May 29, 1926, that the deficiency, as a result of the proposed disallowance of the item would not be assessed. Therefore, no further adjustment of this item will be made.

A synopsis of your net income as adjusted follows:

1924	
Ordinary net income reported	$37,071.20
Add:	
1. Profit from joint ventures	$59,013.13
2. Loss on roulette	3,700.00
Ordinary net income adjusted	$99,784.33
Capital net gain	$33,494.00

[25]

Computation of Tax

Ordinary net income adjusted		$ 99,784.33
Less:		
Dividends	$4,000.00	
Exemption	3,300.00	7,300.00
Balance subject to normal tax		$92,484.33
Normal tax at 2 per cent on $4,000.00		$ 80.00
Normal tax at 4 per cent on $4,000.00		160.00
Normal tax at 6 per cent on $84,484.33		5,069.06
Surtax on $99,784.33		16,942.36
Tax on capital net gain, 12½ per cent of $33,494.00		4,186.75
Total tax		$26,438.17
Less:		
Earned income credit		47.00
Adjusted tax liability		$26,391.17
Less:		
Tax previously assessed		7,354.56
Deficiency		$19,036.61

Explanation of Changes

1. Profit on real estate ventures in the amount of $59,013.13, as shown in Schedule 1-A of the report which was not previously reported, has been included in net income. It is your contention that only actual cash received from these ventures for this year is taxable income and that one-half of this amount is properly taxable to your wife.

The information submitted indicates that each co-owner's share of the proceeds of sales in the hands of the selling agent was applied to such owner's

share of the cost of improvement and selling and to his share of maturing land purchase obligations, and any excess remaining to his credit was subject to withdrawal at any time. Article 51, Regulations 65 and 69, provides that income which is credited to the account of, or set apart for a taxpayer and which may be drawn from by him at any time is subject to tax for the year during which so credited or set apart, although not then actually reduced to possession. [26]

The part of the proceeds of the sales which was applied against your share of maturing land purchase obligations represented income to you and the fact that this amount was used to reduce an indebtedness does not change its status.

The recommendation of the revenue agent that your share of the sales proceeds of real estate be treated as having been constructively received by you, when it came into the hands of your selling agent, including that part which was applied by the selling agent in payment of your indebtedness, as well as that part which was held subject to your demand, has been approved in this office.

The information submitted relative to the taxability of part of the profits to your wife indicates that the profits were derived from community property and are taxable in their entirety to you.

Under the California statutes community property is defined as property acquired by husband and wife, or either, during marriage, when not acquired

as the separate property of either and separate property is defined as that which was owned by them, respectively, before marriage and that acquired afterward by gift, bequest, device or inheritance, or descent with the rents issues and profits thereof. It appears that the real estate investments here in question were made from money earned by you as manager of a hotel.

It is recognized that under the laws of California a husband and wife may by contract change the status of community property to that of separate property. However, the letter which you addressed to your wife under date of September 5, 1923 relative to her assuming the liability for a part of the payments on the real estate does not appear to represent such a contract. Reference is made to the decision of the United States Board of Tax Appeals in the case of J. B. Lilly, Board of Tax Appeals, Volume 4, Page 1149.

The income in question is, therefore, held to have been derived from community property and is taxable in its entirety to you. Reference is made to Treasury Decision 3817, Cumulative Bulletin V-1, Page 188.

2. The deduction of $3,700.00, representing a loss from playing roulette, has been disallowed for the reason that the same was not substantiated. [27]

1925

Net income reported		$27,938.70
Add:		
Profit from joint ventures		52,083.10
Net income adjusted		$80,021.80

Computation of Tax

Net income adjusted		$80,021.80
Less:		
Dividends	$9,503.67	
Personal exemption	4,300.00	13,803.67
Balance subject to normal tax		$66,218.13
Normal tax at 1½ per cent on $4,000.00		60.00
Normal tax at 3 per cent on $4,000.00		120.00
Normal tax at 5 per cent on $58,218.13		2,910.91
Surtax on $80,021.80		7,864.14
Total tax		$10,955.05
Less:		
Earned income credit		8.85
Adjusted tax liability		$10,946.20
Tax previously assessed		1,193.61
Deficiency		$ 9,752.59

[28]

Explanation of Change

Profit from the joint ventures in real estate has been increased for the same reasons as those given in the adjustment for 1924.

A synopsis of your tax liability as stated on Form 866 is shown as follows:

1924		
Tax assessed	$ 7,354.56	
Proposed deficiency	19,036.61	
Liability as stated on Form 866		$26,391.17
1925		
Tax assessed	$ 1,193.61	
Proposed deficiency	9,752.59	
Liability as stated on Form 866		10,946.20
Total liability as stated on Form 866		$37,337.37

A copy of this communication is being furnished your representative, Mr. E. P. Adams in accordance with the authority conferred in your power of attorney.

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

[Endorsed]: United States Board of Tax Appeals. Received at Hearing June 14, 1932.

ANSWER TO AMENDED PETITION

(Read into record June 14, 1932)

The MEMBER: Amended petition may be received. Does the Respondent desire to modify the answer in any respect?

Mr. WILSON: To the extent of any allegation of fact, with exception of the judicial allegation, the respondent should like to have the record show a general denial of such.

The MEMBER: The record will show that. [29]

[Title of Court and Cause.]

FINDINGS OF FACT AND OPINION

In the absence of sufficient proof to overcome the presumption that the property acquired by the petitioner and his wife after marriage was community property under the laws of the State of California, held, that the income received by them in 1924 and 1925 from such property is taxable in its entirety to the petitioner as community income.

Joseph D. Peeler, Esq., Melvin D. Wilson, Esq., and E. P. Adams, C. P. A., for the petitioner.

R. W. Wilson, Esq., for the respondent.

The respondent has determined deficiencies in petitioner's income tax for the calendar years 1924 and 1925 in the amounts of $19,036.61 and $9,752.59, respectively. The petitioner alleges that the respondent erred in including in his income all of the profits received in those years from certain real estate and other investments in which his wife had a separate one-half interest.

FINDINGS OF FACT.

The petitioner and his wife, Marguerite S. Anderson, citizens of the State of California, were

married in 1914. The petitioner at that time was employed as assistant manager of the Beverly Hills Hotel, which was owned by his mother, Margaret Anderson, at a salary of $3,000 per annum. At the time of their marriage neither the petitioner nor his wife owned any property of consequence. The petitioner's employment with the hotel continued until the World War, when he went abroad.

From 1914 to 1923, inclusive, the petitioner's wife acted as a hostess for the hotel, devoting all of her time to that business. Her duties were to provide entertainment and to arrange social functions for the guests and to secure new patrons. The hotel catered to the wealthy class. [30]

At the time of her marriage, the petitioner's wife received a gift of $5,000 from her father, J. H. Slattery. Thereafter, for five or six years, she received additional gifts from him aggregating about $20,000. This money was used for various purposes, including household expenses.

In 1916 the petitioner's wife learned that a friend of hers was interested in buying an estate in the Beverly Hills section. She and the petitioner located a desirable piece of property and negotiated the sale, receiving a commission of $10,000, which was paid to the petitioner, it being agreed between them, however, that the commission should belong one-half to each.

In May, 1916, the petitioner and his wife purchased five vacant lots in Beverly Hills at a total cost of $13,200, which amount they paid with the

$10,000 commission referred to above and $3,200 which the petitioner's wife secured from her father. The deeds to the lots were taken in the petitioner's name and so remained until May, 1932, when new deeds were made to the petitioner and his wife as tenants in common.

While the petitioner was overseas and prior to his return in 1919 the petitioner's wife and his mother entered into an oral agreement whereby she, the petitioner's wife, and the petitioner, upon his return, were to take over the entire management of the hotel and were to receive a stipulated yearly salary of $3,000 plus one-half of the net profits. As a consideration for this agreement the petitioner's wife was to render full time services to the hotel. It was specifically agreed that she would share equally with the petitioner the yearly salary and the profits, if any. Under this contract, the petitioner and his wife received profits over the period 1919 to 1923, inclusive, of approximately $140,000. This amount, together with the salary of $3,000 per year, was paid to the petitioner by checks drawn on the hotel by himself as manager and was deposited by him in a joint bank account for himself and wife.

In September, 1923, the petitioner, with the knowledge and consent of his wife, entered into agreements with the Janss Investment Co. and Charles H. Christie for the acquisition of certain undivided interests in two real estate subdivisions. The contracts were signed by the petitioner and

deeds were made out in his name. The total investment therein of the petitioner and his wife was approximately $56,000, which was paid, for the most part, out of the profits from the hotel. Soon after this transaction the petitioner's wife asked him to prepare a written memorandum defining his and her respective rights in the investment. Accordingly, the petitioner, on Sep- [31] tember 5, 1923, prepared and delivered to his wife the following letter:

> "Confirming our conversation relative to the Janss Investment and Charlie Christie land deal.
>
> Charlie and I agree to purchase from Janss 120.5 acres for $180,750 (for one-half interest, Janss retaining one-half), payable $60,-250. cash in September and October, and notes for the balance of $120,500. On this deal I today paid $5000. on the September installment. I also entered into an agreement to purchase from Charlie Christie a 1/4 interest in 107 acres, the total price of the acreage being $321,000. and our 1/4 will amount to $80,250. Under the agreement by which Charlie is buying this land from Janss he is to pay $107,000. cash and notes for $214,000. The cash payments are to be made in September and October and I to-day paid $6250, which is 1/4 of the cash payment due in Sept.
>
> I understand from you that you agree to these transactions and agree to payment of your proportion of the cash payments from any funds now held jointly by us, and that you assume lia-

> bility for your proportion of future payments, such liability to attach to your separate funds as well as those held jointly by us.
>
> It is the belief of Janss and Charlie that with the placing of this property on the market, the notes will be paid off from sales and we will not be called upon for cash to meet same.
>
> Should you for any reason have occasion, in my absence or in case of any misunderstanding arising later, to secure further details relative to this, Dr. J. will give you same."

A copy of the above letter was filed at the office of the Janss Investment Co. and Charles H. Christie also was advised of its contents.

In the Janss Investment Co.'s books an account was kept in the petitioner's name until January, 1929, when the business was taken over by a newly organized corporation. In the books of the new company separate accounts were set up for the petitioner and his wife, showing them owners of separate equal interests.

From time to time the petitioner and his wife made other investments with their joint earnings and profits, with the understanding and agreement that they were equal owners therein and that each was entitled to receive one-half of the profits and was liable for one-half of the losses.

The petitioner's wife at all times took an active interest in the affairs of the real estate syndicate. She frequently discussed matters of policy with the managers and gave her approval to the plans for the development and sale of the property. She signed

all the deeds and mortgages and other papers of that character. Edwin Janss, president of the Janss Investment Co., and Charles H. Christie both understood that Marguerite S. Anderson and the petitioner owned equal interests in their investment. In August, 1926, the Janss In- [32] vestment Co. deeded back to "Stanley S. Anderson and Marguerite S. Anderson" an undivided one-fourth interest in 37 acres of the syndicate property which had not been sold.

In February, 1924, the petitioner and his wife executed and delivered to Edwin Janss and Harold Janss a general power of attorney, which was duly recorded. On January 27, 1925, the petitioner's wife executed and delivered a similar power of attorney to the petitioner.

In the latter part of 1924 the auditor for the Beverly Hills Hotel, upon request of the hotel bookkeeper, opened up a separate set of books for the petitioner as of January 1, 1925. Near the end of 1926 the petitioner inquired if his wife's share of the earnings from the "Young's Building" were being credited to her and, being informed that they were not, had the auditor open an account entitled "Joint M. S. Anderson" in which was set up the Young's Building at a valuation of $202,788. Also, at about that time, another account was opened as of January 1, 1926, entitled "Janss Inv. Co. Joint M. S. Anderson." Also, at about that time, another account was set up for "Marguerite S. Anderson."

On June 8, 1932, the petitoner and his wife, upon the advice of her attorney, executed a memorandum

agreement providing in part as follows:

> "WHEREAS the parties hereto were married in 1914 and at the time of said marriage neither had any property, and shortly thereafter an agreement was made between them to the effect that all property acquired by either after the date of their marriage, whether separate or community, should be deemed to be and should constitute the property of both of them as tenants in common, each owning an undivided one-half interest therein; and
>
> WHEREAS about this time or shortly thereafter Mrs. Anderson received from her father, as a gift to her, various sums of money aggregating in all approximately $20,000.00, which she turned over to Mr. Anderson when and as received to invest under said agreement; and
>
> WHEREAS Mr. Anderson used said money, together with various earnings of both of them and various property which he received by gift from his mother, and proceeds and avails of all of said property, in purchasing, owning and selling real estate and other property, and for the purpose of convenience has carried the legal title to all property so acquired in his own name, but as trustee for himself and Mrs. Anderson as tenants in common, and said property has at all times constituted and does now constitute the property of the parties hereto as tenants in common, each owning an undivided one-half interest therein; and

WHEREAS the parties desire to confirm the agreement between themselves hereinbefore referred to and to reduce the same to writing and thenceforward to have the legal title to all real property acquired by them during their said marriage, from whatever source, held in their joint names as tenants in common pursuant to said agreement;

NOW, THEREFORE, it is MUTUALLY AGREED by and between the parties hereto as follows: [33]

1. All property whatsoever, whether separate or community, heretofore or hereafter acquired by either of the parties hereto since and during their marriage and howsoever the legal title thereto may be held, constitutes the property and is owned by them jointly as tenants in common, each owning an undivided one-half interest therein as his and her respective separate property, and none of said property, no matter how the legal title thereto may be held, is or shall be owned in any other way than as tenants in common, each owning an undivided one-half interest therein as his and her respective separate property."

For the calendar years 1920 to 1923, inclusive, the petitioner and his wife filed joint returns which were prepared for them by the hotel auditor. The petitioner informed the auditor in 1920 that one-half of the profits from the hotel belong to his wife separately, but the auditor advised him that it was neces-

sary under the law and the Commissioner's regulations to report all the income in joint returns. For the years 1924 and 1925 the petitioner and his wife filed separate returns in which they each reported one-half of their entire income. The respondent in his audit of the returns for 1924 and 1925 has held the petitioner liable for taxes upon the entire amount of the income reported in both the returns. The items of income which the petitioner alleges, in his amended petition, were erroneously included in his income and which are taxable to his wife are as follows:

1924	
Interest from Notes, Mortgages, and Bank Deposits	$1,698.63
Rents from real property	9,876.18
Profits on sales of stocks and real property	6,768.19
Dividends from stocks	2,000.00
Profit from joint ventures in real estate	29,506.56
Capital net gain	16,747.00
1925	
Interest from Notes, Mortgages, and Bank Deposits	$964.78
Rents from real property	5,342.80
Dividends on stocks	4,751.83
Profit from joint ventures in real estate	28,541.55
Loss from joint ventures in real estate	2,162.89

OPINION.

SMITH: The only question to be determined in this proceeding is whether the income received by

the petitioner and his wife from certain joint investments in 1924 and 1925 is taxable in its entirety to the petitioner as community income under the laws of the State of California, or whether one-half of such income is taxable to the petitioner's wife as her separate income.

Under the law of the State of California, as it existed prior to enactment of section 161 (a) of the California Civil Code (enacted April 28, 1927), all property acquired after marriage by either spouse constitutes community property except that acquired by gift, bequest, devise, or descent. California Civil Code, secs. 161-164. Likewise [34] the income from such property constitutes community income for which the husband is liable in respect to the Federal income tax. United States v. Robbins, 269 U. S. 315; Blair v. Roth, 22 Fed. (2d) 932. Section 161 (a) of the California Civil Code, which gives to the wife "present, existing and equal interests" in community property during continuance of marriage relations, and renders her liable for the Federal income tax on her separate share of the community income, United States v. Malcolm, 282 U. S. 792, does not apply to property acquired prior to its enactment or affect the taxability of the income therefrom to the husband. Paul F. Hill et al., Executors, 24 B. T. A. 1144; F. J. Carman, 25 B. T. A. 162.

As the respondent concedes, however, the respective interests of the husband and wife in community property and likewise community income, with certain limitations as set forth in Lucas v. Earl, 281 U. S. 111, are subject to change by contract between

the husband and wife. Kaltschmidt v. Weber, 145 Cal. 596; 179 Pac. 272; Wren v. Wren, 100 Cal. 276; 34 Pac. 775; Larson v. Larson, 15 Cal. Ap. 531; 15 Pac. 340; Smith v. Smith, 47 Cal. App. 650; 191 Pac. 60; Francis Krull, 10 B. T. A. 1096; W. A. Roth, 22 B. T. A. 587; Blair v. Roth, supra. If the wife has a vested interest in the community property separate from that of her husband, the income therefrom is taxable to her in her separate returns. Poe v. Seaborn, 282 U. S. 101.

Was there such a contract between the petitioner and his wife and did the wife in 1924 and 1925 have a separate vested one-half interest in the property from which the income in dispute was to arise?

Much of the evidence adduced by the petitioner was directed towards proving that his wife contributed equally with him to their joint earnings after marriage, including the $10,000 fee for negotiating the real estate sale in 1916, the salary and profits from the operation of the hotel, and the income from all other sources. Assuming that to be true, however, these earnings and the property acquired therewith might nevertheless belong to the community, for, as we have said above, under the laws of the State of California, all the property acquired after marriage by either spouse prior to the enactment of section 161 (a) of the California Civil Code is presumed to be community property except that acquired by gift, bequest, devise, or descent. Of the $13,200 invested in the real estate lots in 1916, $3,200 was received by the petitioner's wife as a gift from

her father and was therefore not community income. The evidence is to the effect that the petitioner's wife received approximately $20,000 from this source after her marriage to the petitioner. However, these funds were commingled with their other earnings [35] and investments so that their identity was lost. See Pedder v. Commissioner, 60 Fed. (2d) 866; John H. Flach, 13 B. T. A. 383.

The petitioner and his wife both testified that there was an oral agreement between them that they should each own a separate one-half interest in all of their income and property. They testified that there was such an agreement with respect to the $10,000 fee received from the real estate sale in 1916, the salary and profits from the operation of the hotel during the years 1919 to 1923, inclusive, and all of their investments made with these and other funds. There is no written evidence of such an agreement with respect to any of their property prior to September 5, 1923, which is the date of the above letter from the petitioner to his wife, regarding their investment in the Janss Investment Co. and Charles H. Christie real estate ventures. This letter does not purport to be, nor can it be construed as, a valid assignment by the petitioner to his wife of any interest in these investments. It contains the statement:

> "I [the petitioner] understand from you that you agree to these transactions and agree to payment of your proportion of the cash payments from any funds now held jointly by us, and that

> you assume liability for your proportion of future payments, such liability to attach to your separate funds as well as those held jointly by us."

It is not shown to which joint funds or separate funds of his wife the petitioner referred. The letter is not signed by the petitioner's wife and was not executed as an agreement. We think that it has but little, if any, probative value.

The deeds to the five real estate lots purchased in 1916 were taken in petitioner's name and so remained until May, 1932, just prior to the hearing of this proceeding, which was on June 14, 1932, when they were changed to show the petitioner's wife the owner of a one-half interest in the property. Likewise, the investments in the real estate syndicates were recorded in the petitioner's name. The formally executed agreement defining the separate interests of the petitioner and his wife in all of their property, which is set out in part above, was not executed until June 8, 1932. This agreement, of course, has no retroactive effect and does not change the status of the income of the petitioner and his wife for the taxable years 1924 and 1925. W. A. Roth, 17 B.T.A. 1330.

The facts in this case are hardly distinguishable from those in Blair v. Roth, supra, in which the court held, reversing the Board, that notwithstanding an oral agreement between husband and wife that the earnings of both should be contributed to

a common fund and that the surplus thereof, after payment of their personal and community expenses, should belong to them on an equal footing, the [36] earnings of both spouses constituted "community income" taxable to the husband. In its opinion, the court said:

> "* * * There was no writing, and the testimony of appellee and his wife, much of which was elicited by highly leading questions, was to the effect that, shortly after their marriage, they had an understanding, not that the earnings of each should constitute the separate property of the earner, but that the earnings of both should be contributed to a common fund, of which they were to be the owners, share and share alike. They referred to themselves as equal partners in all they had or should acquire, jointly or severally.
>
> *   *   *   *   *   *
>
> * * * As exemplified in actual practice, the agreement of the appellee and his wife amounted to substantially this: They would contribute their earnings to a common fund, out of which their personal and community expenses would be paid, and of the savings, if any, and the property in which such savings were invested, they were to be the owners upon an equal footing. By the appellant it is not contended that, under the California statutes (sections 159, 160, Civ. Code; Wren v. Wren, 100 Cal. 276, 34 P. 775, 38 Am. St. Rep. 287;

Kaltschmidt v. Weber, 145 Cal. 596; 179 P. 272; Smith v. Smith, 47 Cal. App. 650, 191 P. 60; Perkins v. Sunset T. & T. Co., 155 Cal. 712, 103 P. 190), a husband and wife domiciled in that state may not make valid agreements relating to either their separate or their community property, or that it would be incompetent, by appropriate agreement between them, to constitute the earnings of the wife her separate estate. In essence his contention is that, at most, the agreement here was for an assignment by each of the parties of one-half of his or her earnings to the other; that, at the instant they were received, the salaries were, by the law, impressed with the status of community property, and were taxable with reference to that status; and that the obligation to pay the tax so computed could not be escaped by contributing such incomes to the so-called partnership between the two members of the community, any more effectually than by contributing it to a like enterprise as between one member of the community and a third person. In this view we concur."

The petitioner herein testified, upon interrogation by his counsel, as follows:

"Q. Did you have an agreement in advance as to how the commission was to be split?

A. Yes, sir. When we got the commission we agreed to go fifty-fifty.

Q. She was to have half as her separate property?

A. Yes, sir.

* * * * * *

Q. At the time you purchased those lots [the five vacant lots purchased in 1916] there was a definite agreement with Mrs. Anderson how the property interest was to be?

A. She had a one-half interest and I owned the other half.

Q. How were the deeds taken?

A. The deeds?

Q. To whom?

A. In my name.

Q. She knew that?

A. No, she didn't know until three or four weeks ago.

* * * * * * [37]

Q. You had an arrangement with Mrs. Anderson as to how the profits and salary [from the operation of the hotel] would be divided?

A. She made the arrangement with mother.

Q. Did you have an arrangement with your wife?

A. When I came home, yes.

Q. What arrangement did you make with your wife?

A. She was to work with me, I was to have half and she was to have half.

Q. As separate property?

A. As her own money.

* * * * * *

Q. You bought other real estate?

A. Bought and sold.

Q. As I understand the situation, the title to the various lots were taken in your name?

A. Yes, sir.

Q. Did Mrs. Anderson know it?

A. She didn't know it until about two weeks ago.

* * * * * *

Q. So that every investment you made was a joint agreement?

A. Yes, sir.

Q. Was there any agreement between you and Mrs. Anderson as to how the property was to be held, that is, whether she had any interest?

A. She understood she had a half interest.

Q. A half interest in each property?

A. Everything I had or we acquired between us."

In Pedder v. Commissioner, supra, the Circuit Court of Appeals for the Ninth Circuit held, affirming the Board, upon facts similar to those in the instant case and those in Blair v. Roth, supra, that the presumption of the law of the State of California in favor of community property was not overcome. See also W. A. Roth, 22 B.T.A. 587, in which the Board, also under similar facts, followed Blair v. Roth, supra.

Aside from the presumption of law which, as we have said, operates in favor of the respondent's

contention that the income in question was community income, the very nature of the question here calls for the strictest proof on the petitioner's part. Where, as in the instant case, the written records and the acts of the husband and wife for a number of years indicate that, either ill-advisedly or without knowing the result upon their tax liability, they have submitted to the community property rule of their state, they should not be permitted to avoid the legal consequences of that rule merely upon their own testimony that they had previously entered into an oral agreement between themselves by which their property rights must be determined upon some other than the community property basis. We can not escape the conviction that this is the tenor of the cases in which the courts have considered this question.

Upon the evidence before us, we are not convinced of the existence of any valid enforceable agreement between the petitioner and his [38] wife, prior to the written agreement executed on June 8, 1932, that their income and property should be owned by them otherwise than "on an equal footing" as in Blair v. Roth, supra. We are therefore of the opinion that the petitioner has not overcome the presumption of the correctness of the respondent's determination that the income in question for the years 1924 and 1925 was community income taxable to the petitioner.

Reviewed by the Board.

Judgment will be entered for the respondent.

GOODRICH, dissenting: I disagree with the majority opinion, for the evidence herein convinces me that a contract existed between petitioner and his wife under which each acquired and held, as tenants in common, a separate one-half interest in these properties, and, consequently, the income therefrom should be taxed, one-half separately to each of them.

LANSDON and BLACK agree with this dessent.

[U. S. Board of Tax Appeals Seal] [39]

United States Board of Tax Appeals, Washington

Docket No. 42053

STANLEY S. ANDERSON,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION.

Pursuant to the determination of the Board, as set forth in its report promulgated May 24, 1933, it is

ORDERED and DECIDED: That there are deficiencies of $19,036.61 and $9,752.59 for the calendar years 1924 and 1925, respectively.

[Seal] [Signed] CHARLES P. SMITH,

Member.

[Endorsed]: Entered May 26, 1933. [40]

[Title of Court and Cause.]

PETITION FOR REVIEW OF DECISION BY THE UNITED STATES BOARD OF TAX APPEALS.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Your petitioner, Stanley S. Anderson, in support of this, his petition, filed in pursuance of the provisions of Section 1001(a) of the Act of Congress approved February 26, 1926, entitled the Revenue Act of 1926, as amended, for the review of the decision of the United States Board of Tax Appeals promulgated on the 24th day of May, 1933, and its judgment entered on the 26th day of May, 1933, in the case of Stanley S. Anderson, Petitioner, vs. Commissioner of Internal Revenue, Respondent, number 42,053, under Docket of said Board, wherein the Board redetermined deficiencies of income taxes against the petitioner for the calendar year 1924 in the amount of $19,036.61, and for the calendar year 1925 in the amount of $9,752.59, respectfully shows this Honorable Court as follows: [41]

I.

STATEMENT OF THE NATURE OF THE CONTROVERSY.

1. That on November 1, 1928, the Commissioner of Internal Revenue, in accordance with Section 274 of the Revenue Act of 1926, addressed a letter to the petitioner proposing deficiencies in taxes for the taxable year 1924 in the amount of $19,036.61,

and for the taxable year 1925 in the amount of $9,752.59.

2. That within sixty days from the date of the aforesaid deficiency letter, to-wit: on or about December 24, 1928, petitioner duly filed with the United States Board of Tax Appeals in pursuance of the provisions of the Revenue Acts applicable thereto, his petition requesting the redetermination of the deficiency above referred to, and said petition was duly docketed with the said Board under Docket No. 34,943. That on June 14, 1932, in pursuance of motion filed and granted, the petitioner filed with said Board an Amended Petition, which alleged substantially as follows:

(a) That petitioner married his wife, Marguerite Slattery, in 1914. At the time of their marriage petitioner owned no property except his personal belongings, and his wife received as a wedding present from her father a check for $2,500, as her separate property.

(b) That at various times thereafter, petitioner's wife, Marguerite S. Anderson, received from her father gifts of cash in amounts of from $100.00 to $5,000 each, totalling approximately $20,000 prior to January 1, 1920. [42]

(c) That at the time of his marriage and until he went abroad during the World War, the petitioner worked as Assistant Manager of the Beverly Hills Hotel, Beverly Hills, California, on a salary of $300 per month. Said hotel was owned by petitioner's mother, Mrs. M. J. Anderson.

(d) That petitioner's wife acted as hostess and assistant to the petitioner and devoted considerable time and effort to the interests of said hotel.

(e) That early in 1916, petitioner's wife was informed by a guest of the hotel, John B. Joyce, that he was in the market for a residential estate. She communicated this fact to the petitioner and they agreed to work together to consummate such a sale, one-half of any commission received to be her separate property. As a result of their joint efforts, the sale was effected and petitioner and his wife received a commission in the amount of $10,000 in March, 1916, which was deposited in their joint bank account.

(f) That upon receipt of said $10,000, petitioner agreed with his wife that $5,000 belonged to her as her separate property, but recommended that they invest their funds jointly in the purchase of certain vacant lots in Beverly Hills, California. After some discussion, his wife agreed and the lots were purchased.

(g) That the total cost of said lots was in excess of $12,000, and was paid for out of the following funds: [43]

(1) $5,000 from petitioner's share of Commission.

(2) $5,000 from his wife's share of commission.

(3) Remainder from separate funds of his wife given to her by her father.

(h) That upon the purchase of said lots the petitioner and his wife agreed that they should own said lots and all income from or accretions thereto as tenants in common.

(i) That while petitioner was abroad during the World War, his wife remained with his mother and assisted her in the management of the hotel. Prior to petitioner's return in 1919, his wife made an arrangement with his mother whereby petitioner and his wife were to assume the full active management of the hotel and were to receive as compensation therefor, a salary of $3,000 per year and, in addition, 50 per cent of the net income of the hotel for each calendar year. Petitioner agreed with his wife that one-half of said compensation was to be treated as earned by her and should constitute her separate property.

(j) That during the calendar years 1920 to 1923, inclusive, petitioner and his wife received as compensation for their services to the Beverly Hills Hotel the following amounts:

Year	Salary	Participation in Profits
1920	$3,000	$56,274.79
1921	3,000	15,713.92
1922	3,000	25,773.09
1923	3,000	41,710.08
Totals	$12,000	$139,471.88

[44]

(k) That as said amounts were received, petitioner and his wife consulted and agreed as to the investment thereof. A considerable portion of said amounts was expended in improvements on the vacant lots purchased by them in 1916. Other amounts were expended in the purchase of stock and other real estate.

(l) That it was expressly agreed by and between petitioner and his wife that all of the properties and improvements should be held by them as tenants in common, and that her one-half interest therein should constitute her separate property.

(m) That as a matter of business convenience, petitioner took title to all of said properties, including the vacant lots purchased in 1916, in the name of Stanley S. Anderson, without, however, informing his wife of said fact, and she was ignorant thereof. Petitioner understood and intended that he would act as trustee for his wife to the extent of her one-half separate interest in said properties.

(n) That on or about May 25, 1932, petitioner's wife learned for the first time that said properties were held in the name of Stanley S. Anderson, and not in their joint names. She then demanded that the legal title be amended to correspond with the real situation. As a result, on or about June 4, 1932, a written agreement was executed by petitioner and his wife, wherein they acknowledged that each had

a one-half separate property interest as tenants in common, in all property held by either of them. Deeds [45] of transfer were executed and recorded by petitioner, transferring to his wife, Marguerite S. Anderson, legal title to an undivided one-half interest in all the real estate theretofore standing in his sole name.

(o) That as of September 1, 1923, an agreement was entered into whereby the Janss Investment Co. agreed to convey to Charles H. Christie and Stanley S. Anderson, each, an undivided one-fourth interest in a tract of land consisting of approximately 120.5 acres for a total consideration of $90,375.00 each. Petitioner paid in cash $30,125.00 during the calendar year 1923 and petitioner and his wife executed and delivered their joint and several note for $62,020.00, dated September 1, 1923, and payable on or before September 1, 1926.

(p) That as of September 1, 1923, the Janss Investment Co. entered into an agreement whereby it was to convey to Charles H. Christie a tract of approximately 107 acres for a total consideration of $321,000, of which $107,000 was to be paid in cash with a three year mortgage note for the balance.

(q) That as of September 10, 1923, an agreement was entered into whereby Charles H. Christie agreed to sell to Stanley S. Anderson a one-fourth interest in said property or contract, for one-fourth of the purchase price.

During the calendar year 1923, the petitioner paid on said account $26,750.00 in cash.

(r) That as of November 7, 1923, the Janss Investment [46] Co. repurchased a one-third interest in 66,429 acres of this tract. Agreements were entered into by the Janss Investment Co., Charles H. Christie and Stanley S. Anderson, whereby the above properties were to be subdivided and sold, with the Janss Realty & Finance Co. as agent.

(s) That in entering into the above agreements, it was expressly understood between petitioner and his wife that he was acting in their joint interest and that she was to own as tenant in common and as her separate property one-half of the interests so acquired by petitioner and was to share equally with him in all losses and/or profits realized therefrom.

(t) That in pursuance of this agreement, the petitioner executed and delivered to his wife, Marguerite S. Anderson, under date of September 5, 1923, a letter setting forth their understanding that she owned a one-half interest in these joint ventures, and that she assumed liability for her share of all payments. His wife agreed thereto and delivered to an officer of the Janss Investment Co. an executed copy of said agreement. The other member of the joint ventures, Charles H. Christie, was also informed of the fact that petitioner's wife had an undivided one-half interest in the

contracts and the properties so taken in the name of Stanley S. Anderson. [47]

(u) That petitioner and his wife filed separate income tax returns for the calendar years 1924 and 1925, on the basis of cash receipts and disbursements.

(v) That during the calendar year 1924 the net profits of petitioner and his wife from these joint ventures, as determined by the respondent, was $59,013.13, none of which was paid in cash to either of them, or reported by them on their respective returns. The respondent has erroneously added to petitioner's taxable net income for 1924 the entire amount of $59,013.13, despite the fact that one-half thereof, or $29,506.06, was the separate income of and was taxable to Marguerite S. Anderson.

(w) That during the taxable year 1925, the net profits of petitioner and his wife from these joint ventures, as determined by respondent, was $57,083.10, of which $10,000 was paid in cash to them. Each reported $5,000 as taxable income from these joint ventures on their respective returns for the calendar year 1925. The respondent has erroneously included the entire amount of $57,083.10 in the taxable net income of petitioner for 1925, despite the fact that one-half thereof, or $28,541.55, was the separate income of, and was taxable to, said Marguerite S. Anderson.

(x) That all of the properties owned by petitioner and his wife during the taxable years 1924 and 1925 belonged equally, half and half, to them as their separate property, as tenants in common. [48]

(y) That the respondent erroneously included all of the income from said property in petitioner's taxable net income for 1924 and 1925.

3. Within the time allowed by law the Commissioner of Internal Revenue filed with said Board his answer in said cause, Docket No. 42053, by which were raised the issues determined by said decision of the United States Board of Tax Appeals.

4. The cause, being at issue under the rules of practice of said Board upon the filing of such answer, duly came on for hearing on June 14, 1932, at which time the petitioner by competent witnesses submitted testimony in support of the allegations as aforesaid. Thereafter on May 24, 1933, the said Board rendered its findings of fact in substantial accordance with the facts as alleged in the petition and as hereinbefore set forth, together with an opinion in which it was held, as a matter of law, that there was no validly enforceable agreement between the petitioner and his wife, and that all the income from the properties owned by them was taxable in its entirety to the petitioner as income from community property. On

May 26, 1933, the said Board entered its final order of redetermination approving the deficiencies as determined by the respondent in the amounts of $19,036.61 for 1924 and $9,752.59 for 1925.

II.

DETERMINATION OF COURT OF REVIEW.

The petitioner, being aggrieved by the said findings of fact, opinion, decision, and order, and being an inhabitant of the State of California, County of Los Angeles, City of Beverly Hills, and within the Ninth Circuit, desires a review thereof by the United [49] States Circuit Court of Appeals within which Circuit is located the office of the Collector of Internal Revenue to whom petitioner made his income tax returns for the calendar years 1924 and 1925, involved herein.

III.

ASSIGNMENTS OF ERROR.

The petitioner, as a basis for review, makes the following assignments of error:

1. The Board of Tax Appeals erred as a matter of law in ordering and deciding that there was a deficiency for the year 1924.

2. The Board of Tax Appeals erred as a matter of law in ordering and deciding that there was a deficiency for the year 1925.

3. The Board of Tax Appeals erred in its decision and determination as a fact that the properties owned by petitioner and his wife during each of the years 1924 and 1925 had the status of com-

munity property, under the laws of the State of California.

4. The Board of Tax Appeals erred in its decision and determination as a conclusion of law that the properties owned by petitioner and his wife during each of the years 1924 and 1925 had the status of community property, under the laws of the State of California.

5. The Board of Tax Appeals erred in its decision and determination as a fact that there was no valid enforceable agreement between the petitioner and his wife that their income and property was owned by them otherwise than as community property, during the years 1924 and 1925.

6. The Board of Tax Appeals erred in its decision and determination as a conclusion of law that there was no valid [50] enforceable agreement between the petitioner and his wife that their income and property was owned by them otherwise than as community property, during the years 1924 and 1925.

7. The Board of Tax Appeals erred in its decision and determination as a fact that petitioner's wife did not own, as her separate property, an undivided one-half interest in all the properties owned by the petitioner and his wife during the years 1924 and 1925.

8. The Board of Tax Appeals erred in its decision and determination as a conclusion of law that petitioner's wife did not own, as her separate property, an undivided one-half interest in all the

properties owned by the petitioner and his wife during the years 1924 and 1925.

9. The Board of Tax Appeals erred in its decision and determination as a fact that all of the income from said properties during the years 1924 and 1925 was taxable on the separate return of the petitioner.

10. The Board of Tax Appeals erred in its decision and determination as a conclusion of law that all of the income from said properties during the years 1924 and 1925 was taxable on the separate return of the petitioner.

11. The Board of Tax Appeals erred in its decision and determination as a fact that petitioner's wife was not subject to tax on her separate return with respect to one-half of the income from said properties during the years 1924 and 1925.

12. The Board of Tax Appeals erred in its decision and determination as a conclusion of law that petitioner's wife was not [51] subject to tax on her separate return with respect to one-half of the income from said properties during the years 1924 and 1925.

13. The Board of Tax Appeals erred in its decision and determination as a fact that there was not an express agreement, evidenced by an instrument in writing, between the petitioner and his wife, under which she acquired in 1923 and held during the years 1924 and 1925, as her separate property, an equal undivided interest with peti-

tioner in the Janss Investment Co. and Charles H. Christie real estate ventures.

14. The Board of Tax Appeals erred in its decision and determination as a conclusion of law that there was not an express agreement, evidenced by an instrument in writing, between the petitioner and his wife, under which she acquired in 1923 and held during the years 1924 and 1925, as her separate property, an equal undivided interest with petitioner in the Janss Investment Co. and Charles H. Christie real estate ventures.

15. The Board of Tax Appeals erred in its decision and determination as a fact that petitioner was taxable on his separate return with respect to all the income received by petitioner and his wife from said real estate ventures during 1924 and 1925.

16. The Board of Tax Appeals erred in its decision and determination as a conclusion of law that petitioner was taxable on his separate return with respect to all the income received by petitioner and his wife from said real estate ventures during 1924 and 1925.

17. The Board of Tax Appeals erred in its decision and determination of a deficiency of $19,036.61 for the taxable year [52] 1924.

18. The Board of Tax Appeals erred in its decision and determination of a deficiency of $9,752.99 for the taxable year 1925.

19. The Board erred in rendering decision for the respondent.

WHEREFORE, your petitioner prays that this Honorable Court may review said findings, decision, opinion, and order and reverse and set aside the same; that it direct the United States Board of Tax Appeals to determine that no deficiency is due by the petitioner in this proceeding; and for such other and further relief as the Court may deem meet and proper in the premises.

STANLEY S. ANDERSON,
Petitioner.

LOUIS W. MYERS,
900 Title Insurance Building,
Los Angeles, California.
JOSEPH D. PEELER,
819 Title Insurance Building,
Los Angeles, California.
WARD LOVELESS,
920 Southern Building,
Washington, D. C.
Attorneys for Petitioner. [53]

VERIFICATION.

State of California,
County of Los Angeles.—ss.

Joseph D. Peeler, being first duly sworn, deposes and says that he is one of the attorneys for petitioner in the foregoing Petition; that he has read the same and that the facts set forth therein are true to the best of his knowledge and belief, and that said petition is filed in good faith.

JOSEPH D. PEELER.

Subscribed and sworn to before me this 12th day of August, 1933.

(Seal) MILDRED K. ROGERS,
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: United States Board of Tax Appeals. Filed August 17, 1933. [54]

[Title of Court and Cause.]

STATEMENT OF EVIDENCE.

The following is a statement of evidence, partly in narrative form and partly in verbatim questions and answer form, and other proceedings in the above-entitled cause.

This cause came on for hearing before Hon. Charles P. Smith, Member of the United States Board of Tax Appeals, on June 14, 1932, at Los Angeles, California. Joseph D. Peeler, Esq., Melvin D. Wilson, Esq., and E. P. Adams, Esq., appeared for the petitioner, and Richard W. Wilson, Esq., Special Attorney, Bureau of Internal Revenue, appeared for the respondent.

TESTIMONY OF EDWIN JANSS FOR PETITIONER.

Edwin Janss was called as a witness by and on behalf of the petitioner, and having been first duly sworn, was examined and testified as follows:

(Testimony of Edwin Janss.)

My name is Edwin Janss. I am a real estate subdivider, connected with the Janss Investment Corporation, Janss Investment Company, Fox Hills, five or six corporations. During September 1923 I was president of the Janss Investment Company. I recall certain agreements entered into by that company with Mr. Charles H. Christie and Stanley S. Anderson. [55]

Whereupon there were then offered and received in evidence Petitioner's Exhibit No. 1, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 1 is an agreement dated September 1, 1923, between the Janss Investment Company and Charles H. Christie, which the witness identified.

There was next offered and received in evidence Petitioner's Exhibit No. 2, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 2 is a copy of an agreement dated September 1, 1923, between the Janss Investment Company, Charles H. Christie and Stanley S. Anderson, which the witness identified.

There was also offered and received in evidence Petitioner's Exhibit No. 3, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 3 is a copy of an agreement dated September 10, 1923, between the Janss Investment Company, Charles H. Christie, Stanley S. Anderson and Janss Realty &

(Testimony of Edwin Janss.)
Finance Company, which the witness identified.

There was also offered and received in evidence Petitioner's Exhibit No. 4, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 4 is a copy of an agreement dated November 7, 1923, between the Janss Investment Company and Charles H. Christie, which the witness identified.

Mr. Charles Christie was desirous of purchasing an acreage of land from us for a studio site and then he wanted additional land on both sides of the studio site for subdivision purposes. I agreed to sell the land to him provided he would retain a half interest in the land on both sides of the studio site. In our agreement with him it was provided that he would definitely build a first class motion picture studio on or before a certain [56] date. Then the parcels of land—agreements were entered into, one for the studio site and another for the other tract of land in which we were to retain a half interest. Then subsequent to that it was—no, right after that we had a sales agreement contract between Charles Christie and the Janss Realty & Finance Company, which was a subsidy of the Janss Investment Company, then, later on, it was deemed advisable not to put in the studio and then we released him from the agreement to put the studio there upon the condition that we would have a certain interest in the deal and naturally was consulted in that transaction.

In one case the Janss Investment Company re-

(Testimony of Edwin Janss.)
tained one half or acquired from the Holmby Corporation a one half interest; Stanley S. Anderson and Charles H. Christie each received a deed at that time which provided for a quarter interest in each of them.

Whereupon there was then offered and received in evidence Petitioner's Exhibit No. 5, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 5 is a certified copy of deeds from the Holmby Corporation to the Janss Investment Company, which the witness identified.

There was also offered and received in evidence Petitioner's Exhibit No. 6, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 6 is a deed from the Holmby Corporation to Charles H. Christie (one-fourth interest) and Stanley S. Anderson (one-fourth interest).

There was also offered and received in evidence Petitioner's Exhibit No. 7, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 7 is a mortgage dated September 1, 1923, from Stanley S. Anderson and Marguerite S. Anderson to the [57] Holmby Corporation, together with the release thereof.

These documents which have been introduced related to the tract in which the Janss Investment Company retained from the beginning a one-half

(Testimony of Edwin Janss.)

interest. With respect to the other tract, the title to that went direct to Charles Christie for the entire amount. Subsequently Stanley S. Anderson acquired an interest and the Janss Investment Company acquired an interest.

Whereupon there was then offered and received in evidence Petitioner's Exhibit No. 8, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 8 is a deed dated September 1, 1923, from the Holmby Company, Holmby Corporation to Charles H. Christie.

There was also offered and received in evidence Petitioner's Exhibit No. 9, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 9 is a certified copy of a mortgage dated September 1, 1923, from Charles H. Christie to Holmby Corporation.

There was also offered and received in evidence Petitioner's Exhibit No. 10, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 10 is a certified copy of a grant deed dated January 21, 1925, from Charles H. Christie to Stanley S. Anderson of an undivided two-twelfths interest.

There was also offered and received in evidence Petitioner's Exhibit No. 11, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 11 is

(Testimony of Edwin Janss.)
a certified copy of a grant deed dated January 21, 1925, from Christie to Stanley S. Anderson of an undivided interest in certain real estate. [58]

There was also offered and received in evidence Petitioner's Exhibit No. 12, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 12 is a grant deed dated May 6, 1926, from Stanley S. Anderson and Marguerite S. Anderson to Janss Investment Company for an undivided one-fourth interest in certain property.

There was also offered and received in evidence Petitioner's Exhibit No. 13, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 13 is a certified copy of a grant deed dated May 6, 1926, from Stanley S. Anderson and Marguerite Anderson to Janss Investment Company covering a one-fourth interest in certain property.

There was also offered and received in evidence Petitioner's Exhibit No. 14, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 14 is a certified copy of a grant deed dated May 6, 1926, from Stanley S. Anderson and Marguerite Anderson to the Janss Investment Company conveying an undivided one-sixth interest in certain property.

There was also offered and received in evidence Petitioner's Exhibit No. 15, a copy of which is

(Testimony of Edwin Janss.)
attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 15 is a certified copy of a grant deed dated August 31, 1925, from Stanley S. Anderson and Marguerite Anderson to the Janss Investment Company of an undivided one-fourth interest in certain real estate.

There was also offered and received in evidence Petitioner's Exhibit No. 16, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 16 is the [59] original copy of a grant deed dated August 16, 1926, from the Janss Investment Company to Stanley S. Anderson and Marguerite S. Anderson covering an undivided one-fourth interest in certain real estate.

There was also offered and received in evidence Petitioner's Exhibit No. 17, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 17 is a certified copy of a mortgage dated September 1, 1923, from Charles H. Christie to the Holmby Corporation of an undivided one-fourth interest in certain real estate.

When I first went into these negotiations with Mr. Christie and Mr. Anderson I had no knowledge that Mrs. Anderson might be interested in the property. After the transaction was completed I was informed she did have an interest. Mr. and Mrs. Anderson came to my office and informed me of it and I was handed a notification. You have

(Testimony of Edwin Janss.)

handed me a copy of the notification, but the copy I received from them is one which we have in our files. I have no objection if it goes in the record so long as we get it back.

Whereupon there was then offered and received in evidence Petitioner's Exhibit No. 18, being a communication written on September 5, 1923, by Stanley S. Anderson to Marguerite S. Anderson, as follows: [60]

"Beverly Hills, Calif.
September 5, 1923.

Mrs. Marguerite S. Anderson,
Beverly Hills Hotel.

Confirming out conversation relative to the Janss Investment and Charlie Christie land deal.

Charlie and I agree to purchase off Janss 120.5 acres for $180,750.00 (for one half interest, Janss retaining one-half), payable $60,-250.00 cash in September and October and notes for the balance of $120,500.00. On this deal I today paid $5,000.00 on the September installment. I also entered into an agreement to purchase from Charlie Christie a one-fourth interest in 107 acres, the total price of the acreage being $320,000.00 and our 1.4 will amount to $70,250.00. Under the agreement by which Charlie is buying this land from Janss, he is to pay $107,000.00 cash and notes for $214,-000.00. The cash payments are to be made in

(Testimony of Edwin Janss.)

September and October and I today paid $6,250.00 which is 1.4 of the cash payment due in Sept.

I understand from you that you agree to these transactions and agree to payment of your proportion of the cash payments from any fund now held jointly by us and that you assume liability for your proportion of future payments, such liability to attach to your separate fund as well as those held jointly by us.

It is the belief of Janss and Charlie that with the placing of this property on the market, the notes will be paid off from sale and we will not be called upon for cash to meet same.

Should you for any reason have occasion, in my absence or in case of any misunderstanding arising later, to secure further details relative to this, Dr. J. will give you same.

(Signed) Stanley S. Anderson." [61]

This document (Exhibit No. 18) bears the notation "o.k.—approved". Stanley initialed it. I wrote on there "file in Christie-Anderson". We carried their agreement as the Christie-Anderson file and I signed it and sent it down to the accounting department.

The witness further testified:

"Q. As I understand, Mr. Janss, Mr. and Mrs. Anderson came in to see you and left with you a copy of this document which you have

(Testimony of Edwin Janss.)

just identified, and what else did they state at that time.

A. Nothing further than that she had an undivided half interest, rather that she owned herself, one-half of everything of the various syndicates we were interested in with Anderson.

Q. Was that made very clear, emphasized in any way?

A. Mrs. Anderson made it very positive.

Q. Did Mr. Anderson?

A. He agreed to it.

Q. What did you then do with that document?

A. I simply sent that document down and notified our force that in all matters pertaining to any transactions we would have with Stanley Anderson that it would be absolutely necessary to have Mrs. Anderson's signature relative particularly as to the agreements we had relative to subdivisions. In other words, the Janss Finance Company had an agreement with Anderson and with Christie that we would subdivide the property and would have to prepare and show them the original lay-out together with a budget showing the cost of improvements and the selling price of the lands and they would have to get their approval of the lay-out of the land and the price list of the property, get their approval of all that."

(Testimony of Edwin Janss.)

On every document, to my knowledge, that was necessary for our protection that Mrs. Anderson's signature appeared. I do not know whether there is any requirement in the California law which requires a wife to sign such papers unless she has a property interest. Mrs. Anderson signed various notes. [62]

Whereupon there was then offered and received in evidence Petitioner's Exhibit No. 19, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 19 is comprised of 17 promissory notes executed by Stanley S. Anderson and Marguerite S. Anderson during the period September 1, 1923-May 16, 1930, in various amounts and to different payees.

The notes payable to the Janss Investment Company were secured by an assignment of the syndicate's interest and profits of the commission. The note dated April 20, 1926, shows an assignment of interest in the Christie-Janss Corporation; it shows herself as lendee. My instructions were we never loaned Mr. Anderson anything, there was always collateral so his interest with us was protected. I know we loaned it to both of them. Each of the notes shows it is secured by equity in these syndicates.

We received two letters signed by Stanley S. Anderson and Marguerite S. Anderson addressed to the Janss Investment Company which accom-

(Testimony of Edwin Janss.)

panied the note dated March 11, 1926, and the note dated April 20, 1926, respectively.

Whereupon there was then offered and received in evidence Petitioner's Exhibit No. 20, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 20 is the two letters signed by Stanley S. Anderson and Marguerite S. Anderson, which the witness identified.

Mr. and Mrs. Anderson borrowed money from the Janss Investment Company from time to time. As security for those loans they transferred their interest in the syndicates and property to the Janss Investment Company. The deeds that were placed in evidence a few minutes ago [63] from Mrs. Anderson to the Janss Investment Company, together with some other interest she had in other tracts, were collateral for these notes. With respect to deeds to the properties sold by the syndicate to the purchasers of lots, my instructions were, they were to sign all deeds. I know it was brought to my attention at one time whether it was necessary for their signatures, inasmuch as they had deeded the property to us on account of various loans made them at one time, and I insisted they both sign all deeds. I gave instructions that Mrs. Anderson should sign and approve everything Mr. Anderson might sign and approve, and so far as I know my instructions were carried out. Mr. Anderson never indicated to me in any way what-

(Testimony of Edwin Janss.)

ever that half of this property did not belong to Mrs. Anderson. Consistently through the period all the treatment was that it belonged equally to the two of them. Mrs. Anderson was thoroughly familiar with all of the transactions and was thoroughly familiar with all the real property in these various syndicates. She did not do as much work as Mr. Anderson but whenever Mr. Anderson was out of town we always telephoned her for advice and approval. I consider Mrs. Anderson to be a very good business woman.

The Janss Investment Company kept the syndicate books. One of the accounts was set up on the syndicate's books as the Christie-Anderson-Janss account. There were various syndicates and they were carried on the books. In other words, each member of the syndicate wasn't carried. It was carried as one set of books, the Christie-Anderson-Janss and another for Christie and each month each syndicate holder was sent a statement. [64]

The witness further testified:

Q. "As I understand it on those books at first, of the Janss Investment Corporation, there was a personal account in the name of Stanley S. Anderson, is that correct?

A. Yes, sir.

Q. Mrs. Anderson's name did not appear in that account?

A. No.

Q. Despite the fact you knew, you had been

(Testimony of Edwin Janss.)

informed she had an equal half interest in the property, is that true?

A. Yes, sir.

Q. Why did you not change the books? Did you have any particular reason for not changing?

A. Probably neglected to do it. At that time we were very busy, it was just started (that) way and was carried through until later on."

About the first of January, 1929, the Janss Investment Corporation was formed to take over all the assets of the Janss Investment Company and other companies. I was an officer of the Janss Investment Corporation. I recall how this account, which, on the books of the old company, had been carried in the name of Stanley S. Anderson, was carried on the new books. We had purchased all of the Christie interests and there remained only the Andersons' and our own interests in the syndicate and at that time, when we re-organized we, you might say, killed the Christie-Anderson-Janss Syndicate and set it up on the books in the names of Stanley and Marguerite Anderson. In other words, from the beginning of 1929, from the time the new corporation took over the syndicates, these accounts have been shown equally, fifty-fifty, to Marguerite and Stanley Anderson. The assets split in half and half

(Testimony of Edwin Janss.)
credited to Stanley and the other half to Marguerite Anderson. That was the first time we had occasion to change the books from the time they were originally set up. [65]

I spoke of purchasing from Mr. Christie his interest. At that time he did not own his entire interest. He had a syndicate when we first started doing business with him. We thought that we were doing business with him alone, but we afterwards found out he had a syndicate in which there were five or six other members. We weren't informed of that, we acquired knowledge of the fact. We did not change the books at any time on that account. When we bought out Mr. Christie's interest we did not check into what other people owned. We had Mr. Christie make us a statement as to who was interested in the syndicate and we had their written approval of the sale and authorization to get the check and issue the check to Mr. Christie. In other words, we handled the Christie account as in his name, although we knew other people were interested and we did the same with Stanley S. Anderson, although we knew Mrs. Anderson had half interest.

During the years 1924 and 1925 there was no doubt in my mind that Mrs. Anderson had a half interest in these syndicates.

Cross-Examination.

I have lived in Los Angeles since 1899. During my business career I have had occasion to be in a number of different companies, a number of dif-

(Testimony of Edwin Janss.)

ferent organizations or corporations whose activities revolved around realty holdings. My experience has been very broad over a large number of years.

The witness further testified:

Q. "Now, isn't it a fact that the Janss Investment Company, in any negotiations or transactions affecting realty where there is an element of protection to be secured for the company, would require on a deed or a mortgage, or a note secured by a collateral from a married man whose wife was living with him and who had property, her signature as well as his own? [66]

A. We would on any document, we would on any document that pertains to real estate, yes. But relative to notes, I know we have very frequently taken notes from a married man without his wife's signature.

Q. I meant to limit my question in so far as it related to notes, in promissory notes secured by an interest in realty.

A. Yes, on that, if secured by realty.

Q. As a matter of fact, isn't it true that in California, title companies and abstract companies of all kinds, including such concerns as title insurance or title guaranty corporations, isn't it true to your personal knowledge they invariably require the signature of the wife along with that of a husband, where the spouses are living together and have property?

(Testimony of Edwin Janss.)

A. Yes, absolutely.

Q. Regardless of any state law?

A. Absolutely."

I do not know how many years I have known Mr. Stanley S. Anderson, I have known him for years before I did business with him. I term him an intimate acquaintance of mine; he has been over a period of years. I have known Mrs. Anderson since shortly after they were married in 1914. I did not know her prior to that time. But I had known him before that.

The first business dealings I had with Mr. Anderson was when we sold the land to the Fox Film Corporation. That was prior to this deal. I think in 1923. The negotiations which resulted in several agreements that have been introduced in evidence took up a matter of several weeks, I imagine. There would be conferences held and discussions had, outlining the program. These conferences were attended by Mr. Porter, Mr. Holman, Charles Christie, Stanley Anderson and myself. [67]

The witness further testified:

Q. "Would you venture say, just roughly, estimating about how many of those conferences or discussions there were at which you were present and the other people were present?

A. All told I imagine about four conferences.

(Testimony of Edwin Janss.)

Q. To the best of your recollection was Mr. Anderson present?

A. Yes, sir.

Q. Was Mrs. Anderson there?

A. No, sir.

Q. The first knowledge you had with regard to Mrs. Anderson was when you were given, as you have testified, a copy of petitioner's exhibit 18, which appears to be in letter form, addressed to Mrs. Marguerite Anderson, signed by Stanley S. Anderson, which you identified as being the document that was handed to you and which constitutes your first knowledge that she had an interest in this property?

A. Yes, sir.

Q. Now, except for that notification, that written notification, you had no independent knowledge, Dr. Janss, of any division of property or money or property interest between Mr. Anderson and his wife?

A. Pardon me.

Q. You had no independent knowledge at that time?

A. Not at that time, no.

Q. Not as early as that?

A. Not as early as that."

Redirect Examination.

I spoke of the signature of the wife being required as a practice to notes where they were se-

(Testimony of Edwin Janss.)
cured by real estate, as well as deeds, and so forth. Now, in requiring the signature of Mrs. Anderson to various documents in this case, I required it as a matter of protection. [68] I consider her a partial owner. I required it aside from protection as a partial owner. There is no custom or law in California requiring a wife to sign a price list or other document. In requiring her signature, we did it because we considered her an owner.

Recross Examination.

The reason I considered her an owner was because she and her husband, Stanley S. Anderson, had so informed me. My knowledge was limited to that which I had received from them on that subject. If the Janss Investment Company were making a loan or financing a married man living with his wife, having some property, and as a result of this loan and contemporaneous with it, the company was taking back either a purchase price mortgage or a trust being executed, the Janss Investment Company would require the wife's signature on the notes and mortgage and trust documents. We would try to get it, but in many instances we haven't got it; the wife refused to sign. It is the custom and practice of the company to secure the wife's signature in all cases where it is possible to do so; where there is property of record and we take a mortgage or trust deed.

TESTIMONY OF CHARLES H. CHRISTIE FOR PETITIONER

Charles H. Christie was called as a witness by and on behalf of the petitioner, and having been first duly sworn, was examined and testified as follows:

I am the Charles H. Christie who is a party to these various documents I have heard discussed. I was interested with the Janss Investment Company and Mr. Anderson in these real estate ventures. [69]

I have been handed a document and I can identify it. I have seen the original and that is a copy.

Whereupon there was offered and received in evidence Petitioner's Exhibit No. 21, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 21 is an agreement dated September 10, 1923, between Charles H. Christie and Stanley S. Anderson, identified by the witness.

As far as I know Stanley S. Anderson signed this agreement.

I sold an undivided one-fourth interest in the property I had contracted to buy from the Janss Investment Company to the Holmby Corporation, to Stanley S. Anderson under this agreement. At that time I understood that Mrs. Anderson was interested with Mr. Anderson in the property. I have always understood that Mrs. Anderson had an equal interest with Mr. Anderson. We have discussed the things in relation to the deal together,

(Testimony of Charles H. Christie.)
and I have talked to Mr. Anderson about it. Both Mr. and Mrs. Anderson informed me that she was to have a half interest in the property. I have had other dealings with Mr. Anderson subsequent to that time. He was more or less closely related. I would consult him about various deals, propositions rather, even in real estate, and I suggested on one or two occasions that I recall that he entered into syndicates with me. In one instance in particular I recall it was declined. Mrs. Anderson felt her judgment did not coincide with ours. Mr. Anderson stated to me in connection with those transactions Mrs. Anderson would have to agree; she was his partner and he could not go in if she said no. [70]

Cross-Examination

I heard the testimony of Dr. Janss. I was among those present at the conferences he mentioned during the negotiations on the several agreements. I was away when the actual agreements were signed. My attorney in fact signed those. I remember attending the initial conference. Mr. Anderson was there. The first time I received any information relative to the manner in which Mr. and Mrs. Anderson were handling their property and money was during the negotiations for this particular tract. Mrs. Anderson was not present at the conferences when I was. I discussed the business with Mr. Anderson initially. Prior to that time the matter had not come up as far as I was concerned.

TESTIMONY OF M. R. MOUTHROP FOR PETITIONER

M. R. Mouthrop was called as a witness by and on behalf of the petitioner, and being first duly sworn, testified as follows:

I am an attorney and counsellor at law, and have been a member of the bar for thirty years. My home is in San Francisco. I am acquainted with Stanley S. Anderson and Marguerite S. Anderson. I knew Mr. Anderson's mother for many years and I met Mr. Anderson's wife soon after they were married and I had occasion to see them frequently. Mrs. Anderson, the mother of Mr. Anderson, owned the Beverly Hills Hotel. I was attorney for Mrs. Anderson in 1911 and 1912 at the time she consummated the purchase of the hotel and in the latter part of 1919 she employed me again and I continued as her attorney and counsellor until the time of her death in 1930. [71]

I think Mr. Anderson returned from the war in 1919, a little bit before I was employed by his mother. He was out here when I came down to Los Angeles the first time on that employment for Mrs. Anderson. I made frequent trips to Los Angeles, on an average I presume of four trips a month. Sometimes I spent the greater part of the month down here and after I returned from military service I seriously contemplated moving my office to Los Angeles and was very glad to get an opportunity to be here on the employment for Mrs. Anderson. I stayed at the Bevery Hills Hotel.

(Testimony of M. R. Mouthrop.)

Mrs. Anderson frequently consulted me on the affairs of the hotel and also concerning the employment of Mr. and Mrs. Anderson to run the hotel. Mr. and Mrs. Anderson both consulted me as a matter of fact, in the latter part of 1919 and my recollection is that was the first matter I took up for her, was a question of modification of his agreement. My recollection of the arrangement merely covered the question of he and his wife taking sole control of the property. Up to that time and as it turned out subsequently Mrs. Anderson retained the veto in the management of the property. She lived in the hotel and felt perfectly free to participate in any features of the management she might see fit and it led to a great deal of friction. Mr. and Mrs. Anderson were receiving during the years 1920 to 1923, inclusive, a salary of $3,600.00 a year and half of the profits of the hotel.

The relations between Mrs. Anderson, Sr. and Mrs. Anderson, Jr. were all very cordial, very friendly except when differences would arise between Mrs. Anderson and her son relative to deals, relative to the management of the hotel. As a matter of fact, there was a great deal of family friction. Mrs. Anderson was very fond of her son and yet [72] many of her ideas differed from his as to the system of management and she looked to her daughter-in-law a great deal for assistance in straightening out matters and, as she expressed it, bringing Stanley in line.

(Testimony of M. R. Mouthrop.)

Mrs. Marguerite S. Anderson gave practically her entire time to the work at the hotel. I think she was instrumental in getting new clients for the hotel. We have always felt that she was one of the best drawing cards the hotel had.

In making this agreement Mrs. Anderson, Sr. always insisted Mrs. Anderson, Jr. must be made a party. Mrs. Anderson, Sr. always said she considered that Mrs. Anderson, Jr. was entitled to part of the compensation. I always understood that there was an agreement between Stanley S. Anderson and Marguerite S. Anderson as to separate compensation. In fact, I think I could say it was a matter of common knowledge in the family and myself that such an agreement existed.

The witness further testified:

> Q. "Were any agreements reduced to writing between Mrs. Anderson Senior and Mrs. Anderson Junior?
>
> A. None were until about 1929. None of them prior to 1925 were. I drew quite a number of tentative agreements of all sorts and kinds, some dealing with partition of property and some with the management of property. Many of them did not get beyond rough notes which would be taken up with Mrs. Anderson and her son and others got almost to the point of getting them to sign. Mrs. Margaret D. Anderson changed her mind very quickly and little matters upset her, upset well laid plans very quickly.

(Testimony of M. R. Mouthrop.)

Q. In drawing up those agreements, did you make them between Mrs. Anderson Senior and Stanley alone?

A. I think they were always drawn that he was to be the party but always contained details concerning his wife, always stipulated she was to be a party to them. They were generally made between mother and son. [73]

Q. They were not signed, you say?

A. No, none ever signed.

Q. Mr. Mouthrop, did you ever represent Mr. Stanley Anderson as an attorney?

A. I think in two matters in 1923 and 1924. I soon found it was not going to be very satisfactory to Stanley's mother if I did. We found there might be undue prejudice and I found there were a good many matters in which their interests were in conflict and with the two exceptions,—I don't know if he would have wanted me otherwise, but in the two matters I represented him. Nothing after 1924.

Q. Do you recall talking to him at that time as to how property was owned between himself and his wife?

A. Yes, he consulted me in that regard, he consulted me in that matter although I didn't receive a fee. I feel I was in the nature of his attorney and I would like to have permission from my client to testify as to that.

Mr. PEELER: You have no objection?

Mr. ANDERSON: No.

A. Yes, he said to me, as I recall the conversation, 'I have never deeded any of Peggy's share of her property to her. What do you think about my doing so?' or words to that effect. My advice was that I felt it was unwise for him to do it in view of his activities in the market and his frequent borrowing from the bank, that my own feeling was that banks and finance interests rather looked askance upon people found to be putting property in their wife's name, that it looked as if they were trying to get under cover in case anything went wrong.

Q. Do you know whether or not Mrs. Anderson knew the title was in his name alone?

A. I don't know.

Q. You never had a conversation with her along that line?

A. No, in the conversations she always assumed it was hers and spoke as though she regarded it as hers, but whether she knew how the title was, I don't know." [74]

TESTIMONY OF MARGUERITE S. ANDERSON FOR PETITIONER.

Margueirte S. Anderson was called as a witness by and on behalf of the petitioner and having been first duly sworn, testified as follows:

(Testimony of Marguerite S. Anderson.)

My name is Marguerite S. Anderson. I am the wife of Stanley S. Anderson, whom I married in 1914. My father is J. H. Slattery. Prior to my marriage my home was in Colorado. My husband's occupation was assistant manager of the Beverly Hills Hotel. He was getting a salary at that time of about $300.00 per month.

At the time of my marriage I received a gift from my father of $5,000.00. During the five or six years subsequent thereto I frequently received additional money from my father in amounts of from $200.00 to $1,000.00 or $5,000.00. That continued up to the time of the war. The total he gave me was probably $20,000.00 or $25,000.00.

The witness further testified:

> Q. "What did you do with the money you received from your father?
>
> A. Well, it went for various things.
>
> Q. Household expenses?
>
> A. In the beginning."

I remember a gentleman by the name of John B. Joyce of Boston. He was a guest at the hotel. I recall talking with him early in 1916 about getting a home. He came to the hotel and brought his family. He said he wanted to buy an estate in Beverly Hills and he came to me. We looked over things in Beverly, I took Mr. Joyce around and looked at different places and I sold him a home in Beverly.

(Testimony of Marguerite S. Anderson.)

I had an agreement with my husband, Stanley Anderson, before I made the deal. Half of the commission would be my separate property. We got a [75] commission of $10,000.00.

The witness further testified:

Q. "When you got the commission of ten thousand dollars did you take your share?

A. I could have had my share but I didn't take it.

Q. Why didn't you?

A. Because we decided to buy property with it.

Q. Did you look at the property yourself?

A. I did."

There was then offered and received in evidence Petitioner's Exhibit No. 22, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 22 is a deed dated April 14, 1916, from the Oriole Land and Water Company to Stanley S. Anderson covering Lot one, block three of Beverly.

There was also offered and received in evidence Petitioner's Exhibit No. 23, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 23 is a deed dated April 14, 1916, from Mary MacBean and Isabella MacBean to Stanley S. Anderson, Lot twenty three, block one of Beverly.

There was also offered and received in evidence Petitioner's Exhibit No. 24, a copy of which is attached hereto and by this reference made a part

(Testimony of Marguerite S. Anderson.)

of this statement of evidence. Said Exhibit No. 24 is a deed dated April 15, 1916, from I. Frank Thayer and Enona M. Thayer to Stanley S. Anderson, Lot twenty four, block one, of Beverly.

There was also offered and received in evidence Petitioner's Exhibit No. 25, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 25 is a [76] deed dated May 5, 1916, from Mary A. Taylor and G. L. Taylor to Stanley S. Anderson for Lots one and two, block two of Beverly.

The witness further testified:

> Q. "Those properties are the ones you purchased at that time?
>
> A. Yes, sir.
>
> Q. Do you recall roughly what those properties cost?
>
> A. About thirteen thousand dollars.
>
> Q. How did you purchase them, how did you pay for them?
>
> A. We used the ten thousand dollars we made in commission and father gave me the rest of the money."

$5,000.00 of the commission money was mine. That was a definite understanding. We talked it over many times. My husband offered to give me the cash. I went into that of my own free will. My father was not interested in the property; he was here at the time and looked at the property;

(Testimony of Marguerite S. Anderson.)

went over with us and gave me the $3,000.00 personally. I paid it in on the lots.

The witness further testified:

Q. "Did you have any agreement with your husband after as to how the lots would be owned?

A. Yes, sir.

Q. How?

A. Half mine and half his.

Q. That was definite?

A. That was definite.

Q. Did you know at that time title was taken in his name?

A. I did not. [77]

Q. When did you first know it?

A. A few weeks ago."

During the period from 1914 to 1923, inclusive, I was hostess at the Beverly Hills Hotel. I devoted my entire time to that work. Mr. Anderson returned from war in 1919. I stayed at the hotel and worked steady harder than if he had been there. Prior to the time he came back I had negotiations with Mrs. Anderson, Sr., my mother-in-law. Things were not as she wanted them to be. My husband was not coming back. I talked with his mother during that time and agreed when he returned we could take the hotel over and actively manage it and we were to have a salary and half the profits. I was a party to that agreement. It was absolutely a condition that I should stay there

(Testimony of Marguerite S. Anderson.)
and work. Mrs. M. J. Anderson wouldn't have it any other way. Mr. Anderson came back and took the hotel over. We two ran it. That condition existed until some time in 1924.

The witness further testified:

Q. "Did you have any agreement with Mr. Anderson in advance as to how the profits and other assets were to be divided?

A. I did.

Q. What was that agreement?

A. Half was to be my separate property because I was working as hard as he was.

Q. Did he agree to that?

A. He did.

Q. I assume you took money from the hotel from time to time?

A. We did.

Q. What did you do with that?

A. "Used that money for improvements on the property in Beverly, on the first lots we bought. [78]

Q. Did you buy other property?

A. Bought other property.

Q. Did your husband ever make any investment without consulting you or vice versa?

A. Nothing whatever.

Q. Did he propose any deals that you refused?

A. A good many.

Q. Do you remember any?

(Testimony of Marguerite S. Anderson.)

A. A hotel at Palm Springs, I didn't wish to go into it and he finally agreed not to.

Q. Did you have any agreement how properties were to be held that were purchased with those moneys?

A. What do you mean?

Q. As to whether you had any interest?

A. I was to have half of everything.

Q. Of each piece of property?

A. Of each piece of property.

Q. Did you know whether or not the deed had been taken in his name alone at that time?

A. I did not, I thought they were in both of our names."

I recall the time that Mr. Anderson signed up some papers for real estate ventures with Mr. Christie and Mr. Janss. That was in September, 1923, I think. I knew about the negotiations, from my husband. I did not agree to them in advance. I ultimately agreed to them. I did not sign the agreements. The agreement I had with my husband was so complicated I asked him to write to me about it and just give what our part would be in it, which he did. He wrote a letter and told me in the letter what it would be. The letter I have in mind is the one dated September 5, 1923. [79]

Whereupon there was then offered and received in evidence Petitioner's Exhibit No. 26, being a photostatic copy of a letter dated September 5,

(Testimony of Marguerite S. Anderson.)
1923, written by Stanley S. Anderson to Mrs. Marguerite S. Anderson, an unsigned copy of which was previously offered and received in evidence as Petitioner's Exhibit No. 18.

The agreement with my husband was that as set forth in this letter. I was to share half of the losses and be in my half of the property. I would own half of it. After I got the agreement Mr. Anderson and I took it to Dr. Janss. We gave it to him and told him I had half of that property. Mr. Anderson agreed to that. From that time on I took an active interest in connection with the Janss Syndicate. I looked over the property, approved lot sales, prices and in general talked it over; signed notes, deeds, signed everything. I signed many deeds, approved price lists, had a great many conversations with Mr. Janss. I was familiar with the properties and went over them.

I do not know whether that account was kept on the books of the Janss Investment Company in Mr. Anderson's name or mine. I do not know one way or the other.

During the period from 1920 to 1925 or 1926 I signed leases, mortgages and notes with my husband, other than the ones relating to the Janss Syndicate.

Whereupon there was then offered and received in evidence Petitioner's Exhibit No. 27, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit

(Testimony of Marguerite S. Anderson.)
No. 27 is a mortgage dated July 26, 1916, by Stanley S. Anderson and Marguerite S. Anderson to John Burke, together with a release thereof. [80]

The mortgage dated in July 1916 was on the vacant lots we had just purchased.

There was then offered and received in evidence Petitioner's Exhibit No. 28, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said exhibit No. 28 is a deed of trust dated June 21, 1926, between Grace D. Bonds and Stanley S. and Marguerite Anderson as joint tenants.

There was also offered and received in evidence Petitioner's Exhibit No. 29, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 29 is an agreement dated August 16, 1923, for the sale of real estate between Stanley S. and Marguerite Anderson to Phillip A. L. Bixby.

There was also offered and received in evidence Petitioner's Exhibit No 30, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 30 is a mortgage dated July 16, 1923, by Stanley S. and Marguerite Anderson to the Security Trust and Savings Bank on Lots one and two in block two of Beverly for $30,000.00, with satisfaction thereof.

There was also offered and received in evidence Petitioner's Exhibit No. 31, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 31

(Testimony of Marguerite S. Anderson.)
is a mortgage dated January 31, 1924, from Stanley S. Anderson and Marguerite Anderson to the Security Trust and Savings Bank on Lot one, block three of Beverly, in the amount of $45,000.00, together with release thereof. [81]

There was also offered and received in evidence Petitioner's Exhibit No. 32, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 32 is a mortgage dated November 1, 1924, from Stanley S. Anderson and Marguerite Anderson to the Hollywood Holding and Development Corporation, for the amount of $20,000.00, together with satisfaction thereof.

There was also offered and received in evidence Petitioner's Exhibit No. 33, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 33 is a mortgage dated February 29, 1924, by Stanley S. Anderson and Marguerite S. Anderson to Mary Sturdy, in the amount of $14,000.00, together with satisfaction thereof.

There was also offered and received in evidence Petitioner's Exhibit No. 34, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 34 is a mortgage dated August 28, 1926, from Charles H. Christie, Stanley S. Anderson and Marguerite Anderson to the Security Trust and Savings Bank, in the amount of $150,000.00.

There was also offered and received in evidence

(Testimony of Marguerite S. Anderson.)
Petitioner's Exhibit No. 35, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 35 is a document dated December 6, 1922, of full reconveyance from the Title Guarantee and Trust Company for a certain deed of trust by Stanley S. Anderson and wife. [82]

There was also offered and received in evidence Petitioner's Exhibit No. 36, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 36 is a document dated November 5, 1924, of full reconveyance under deed of trust by the Title Insurance and Trust Company to Stanley S. Anderson and Marguerite Anderson.

There was also offered and received in evidence Petitioner's Exhibit No. 37, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 37 is a document dated January 31, 1924, of full reconveyance for a certain deed of trust by Stanley S. Anderson and Marguerite S. Anderson to the Title Guarantee and Trust Company.

These lots that Mr. Anderson and I purchased in 1916 were subsequently improved. Various buildings, including drug store, garage and meat market, were put on those lots. The lots were much more valuable in 1923 than when we purchased them. In connection with the improvement of these lots I looked over the plans, discussed what size buildings, whether two stories or one story, as-

(Testimony of Marguerite S. Anderson.)
sisted in getting tenants, signed leases. I do not know of any leases that were not signed by her.

There was then offered and received in evidence Petitioner's Exhibit No. 38, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 38 is a photostatic copy of a Power of Attorney dated February 4, 1924, from Stanley S. Anderson and Marguerite S. Anderson to Edwin Janss and Harold Janss. [83]

There was also offered and received in evidence Petitioner's Exhibit No. 39 a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 39 is a copy of Power of Attorney dated January 27, 1925, from Mrs. S. Anderson to Stanley S. Anderson.

I executed these powers of attorney myself.

The agreement with my husband, at the time these vacant lots were purchased in 1916, was that they should belong equally to me and to him despite the fact that I thought I put in more than half the consideration. One half would be my separate property. It was definitely agreed between us two that one-half of the compensation received by me and Mr. Anderson from the Beverly Hills Hotel was to be my separate property. It was further agreed that if moneys were paid out and re-invested I was to have one-half of the property purchased with the cash. With reference to the joint syndicate ventures it was half of mine that went into it,

(Testimony of Marguerite S. Anderson.)
so that all the property under our agreement with Mr. Anderson was actually owned between the two of us; half mine and half his.

The witness further testified:

Q. "Mrs. Anderson, when did you first learn that title to these properties was in the sole name of Mr. Anderson?

A. Just a few weeks ago.

Q. What was your occasion for learning that?

A. At the time this case came up, I asked my husband why there was so much trouble and he told me 'I have never taken out the deeds and title in your name'.

Q. Had he ever told you prior to that time title was in his name?

A. I just assumed it was in both names.

Q. Was that your understanding?

A. From the very beginning." [84]

Had I known sooner I would have done something about it. As soon as I learned about it I went to my attorney and had him draw up an agreement that half of the property was mine and half his. This document you have handed me is the agreement signed by me and Stanley S. Anderson. The deeds that are referred to in this agreement have been recorded.

Whereupon there was offered and received in evidence Petitioner's Exhibit No. 40, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said

(Testimony of Marguerite S. Anderson.)
Exhibit No. 40 is a duplicate original of memorandum agreement dated June 8, 1932, between Stanley S. Anderson and Marguerite Anderson.

During these years, up to date, I always took an active interest in the investments. Mr. Anderson always consulted with me. I do not know of any venture Mr. Anderson went into without consulting me.

Cross-Examination.

I first became associated with the Beverly Hills Hotel in 1914, when I was married. At that time Mr. Anderson was assistant manager. He was there until he went to war and then came back in 1919. He remained with the hotel until some time in 1924.

At the time of my marriage to Mr. Anderson he had no property. I had certain moneys I had received from my father; at the time I was married $5,000.00. That was a wedding gift. Subsequent to that time I received various amounts from him, totaling between $20,000.00 and $25,000.00, over a period of five or six years until about 1920. [85]

Between the period of 1920 and 1923, inclusive, Mr. Anderson and I participated in the profits of the Beverly Hills Hotel to the extent of about $140,000.00. That was in addition to the $3,000.00 annual salary.

The MEMBER: "To whom was that salary paid under the agreement you had?

A. Paid to Mr. Anderson.

(Testimony of Marguerite S. Anderson.)

The MEMBER: You spoke of an agreement that you were to have a part of that salary?

A. All the money was to be divided between us, even the salary."

I think that the profits which my husband and I participated in from the hotel, for the year 1920, were a trifle over $5,000.00 or $6,000.00. To the best of my recollection that is about the amount. One-half of that amount was my separate property. I filed a Federal income tax return showing that, at the time. I know the thing was made out through an accountant or bookkeeper at the hotel. I think I filed a separate income tax return.

For the year 1921 the profits to which Mr. Anderson and I were entitled amounted to about $15,000.00. I think that one-half of that was likewise included in my return for 1921. I would say the same thing as to 1922. I would also say that one-half of the profits for 1923 were included in my income tax return.

I had no income between 1914 and 1923 other than the amounts received from my father and the amounts represented by the profits and salary from the hotel. It was understood at all times between me and Mr. Anderson that one-half of the property we might acquire, one-half of the money we might thereafter make, was to be my separate [86] property. On any and all of these various business

(Testimony of Marguerite S. Anderson.)
transactions he and I always consulted with one another. Any investment or financial venture that he participated in was done with my knowledge and consent.

The witness further testified:

Q. "Why was that necessary?

A. Because we always consulted.

Q. If half of this property belonged to you separately, why was it necessary for any consultation or advice or consent with regard to any venture the other might want to make.

A. Because our money was all put together and we spent it that way.

Q. It was all together and spent that way and each felt each owned half of it?

A. Half of it.

Q. There was never any agreement in writing prior to about a week ago between you and your husband covering this matter of division of property or money, was there?

A. No."

I had had no business experience prior to my marriage. But I was, of course, actively engaged in the management and operation of the hotel from 1914 until 1923 or 1924. During part of that time and ever since that time I have been engaged in dealings affecting realty or personalty, such as those syndicate transactions, a great number of times.

(Testimony of Marguerite S. Anderson.)

The witness further testified:

Q. "You are and for a number of years have been thoroughly familiar with the matter of conveying land, conveying title by a deed or encumbering property by mortgage, signing notes?

A. I am familiar with it, all details were left to the Janss Investment Company. They did all details.

Q. You are familiar with the necessity of executing deeds if you are conveying property and notes and mortgages if you are borrowing money?

A. Yes, sir. [87]

Q. You are thoroughly familiar with that?

A. Yes, sir.

Q. During the time that these syndicates were in force and effect, you never bothered to inquire as to how the account stood on the Janss Investment Company books?

A. No.

Q. You wasn't interested in that?

A. I was. Everything was always carried out apparently and I thought things were carried out the way they should be."

Everything I and my husband did was done together, whether coming to us or going from us.

The witness further testified:

Q. "How did you happen to learn about the deeds being in your husband's name?

(Testimony of Marguerite S. Anderson.)

A. My husband told me.

Q. He had never told you before?

A. No.

Q. You and your husband did buy a piece of real estate, getting a deed for it. Didn't you ever look at it?

A. I suppose so, I did look at it.

Q. If you did have occasion to look at those deeds you didn't notice the fact that your name wasn't on those?

A. No, in fact I signed a good many things piled up."

The profits from the hotel came at various times, certain checks once or twice a year. My husband's and my share of those profits would come in the form of checks from the hotel. [88]

The MEMBER: "Did you and your husband ever receive a separate check?

A. No, they were always made out to Mr. Anderson for the convenience.

The MEMBER: Did you have separate bank accounts?

A. At various times I have had."

As I got the money from my father the first five or six years I always had my bank account. When we have made any we have almost always put it in together in one pool. I would check up our current expenses, household expenses. I have never kept any real books of account in which I would keep

(Testimony of Marguerite S. Anderson.)
track of my proportionate share of these various amounts. We have kept to a certain extent what we were doing; kept the whole thing together.

Redirect Examination.

When I stated that the only money I had earned since 1914 was in connection with the hotel I did not purposely omit the real estate commission made in 1916. I meant that from the beginning.

Various people made out my income tax returns, different accountants at the hotel.

I could have taken out my share at any time. Mr. Anderson could have done the same. It was only by consent that we invested in any particular syndicate or other investment. Prior to two or three or a few weeks ago there had never been any agreement in writing between me and Mr. Anderson as to my separate interest in property. I am excepting from that statement the agreement I had as to the Janss Syndicate. That was in writing, but nothing else was in writing ever. [89]

Recross Examination.

The last document referred to by counsel was merely a letter rather than an agreement.

I cannot say definitely whether I filed an individual tax return with the government for the years 1920, 1921, 1922 and 1923. I know they were made out, I can't tell exactly how. I think I did file such returns, as I remember.

TESTIMONY OF J. H. SLATTERY FOR PETITIONER.

J. H. Slattery was called as a witness by and on behalf of the petitioner, and having been first duly sworn, testified as follows:

I am the father of Mrs. Marguerite S. Anderson. She married Stanley S. Anderson in 1914. I gave my daughter $5,000.00 at the time she was married. During the period from 1914 to 1920 I recall many other gifts of money I made to my daughter. Checks from $150.00 to possibly $5,000.00, the total was around $20,000.00 possibly a little bit more. I was in Beverly Hills in the spring of 1916. I recall the conversation with Mr. and Mrs. Anderson regarding the purchase of certain lots in Beverly Hills.

I was visiting my daughter and Mr. Anderson at the time. I always came once or twice a year, especially at that time of year, and stopped at their home. They were talking about buying those lots in Beverly Hills. They asked me if I wanted to join and take part of them and I didn't care to. At the time the first commission they made was discussed quite a little and in buying the property my daughter told me they were some money short, about $3,000.00, and I gave her the money at that time. She told me she used it for the purchase of those lots. I do not recall any discussion at that time between Mrs. Anderson and me particularly about [90] how title to those lots was to be held. The conversation was when they made their first

(Testimony of J. H. Slattery.)
money on that commission that Mrs. Anderson was entitled to half the commission, and always from then on would have half of everything that they went into. It was my understanding that half of the lots was to belong to my daughter. I wanted to see that my daughter was fairly well protected in that respect. I wanted to know she had an interest in what money was going into it.

TESTIMONY OF STANLEY S. ANDERSON FOR PETITIONER

Stanley S. Anderson was called as a witness by and on behalf of the petitioner, and having been first duly sworn, testified as follows:

I am the petitioner in this case. I married Marguerite S. Anderson in 1914. My occupation at that time was assistant manager of the Beverly Hills Hotel. My salary was $250.00 per month. After our marriage Mrs. Anderson came to the hotel. During the period 1914 to 1923, inclusive, she was hostess to the hotel. Her duties consisted of looking after the welfare of the guests and assisting in the management and personnel of the hotel. Her most important work consisted in getting guests to the hotel. Her duties occupied all of her time.

I recall a transaction in 1916 concerning the commission received from one Joyce. The matter was

(Testimony of Stanley S. Anderson.)
first brought to my attention by Mrs. Anderson. Some friends of hers by the name of John B. Joyce and family were looking for an estate and Mrs. Anderson and I went out and hunted them up a place and afterwards Mrs. Anderson and I sold them the property. My wife and I had an agreement in advance as to how the commission was to be split. When we got the commission we agreed to go fifty-fifty. [91] She was to have half as her separate property. I got $10,000.00 commission. I offered to give my wife half of it. She did not take it. We got together and decided to make an investment. We bought a business corner in Beverly Hills, paying $13,200.00 for five lots. These lots were purchased in April or May of 1916, shortly after we received the commission, in March of 1916. We got the additional $3,200.00 from my wife's father, Mr. Slattery. At the time we purchased these lots there was a definite agreement with my wife that she had a one-half interest and I owned the other half.

The witness further testified:

Q. "How were the deeds taken?

A. The deeds?

Q. To whom?

A. In my name.

Q. She knew it?

A. No, she didn't know until three or four weeks ago.

Q. You mean she didn't pay any attention?

(Testimony of Stanley S. Anderson.)

A. She didn't pay any attention to it.

Q. Do you recall any gifts made by Mr. Slattery to his daughter during the years 1914 to 1920?

A. He was contributing to his daughter right along.

Q. Those gifts, aside from the money put in the lots, was used for what purpose?

A. Expenses.

Q. Household expenses?

A. And everything like that." [92]

I was away during the war, returning in 1919. My wife had written me while I was in Europe that she had made an agreement with my mother whereby we would take the hotel over and run it exclusively, have the management of it and have a salary and one-half of the net profits. My wife worked up the arrangement with my mother. My wife's activity in the hotel was the consideration of the arrangement. My wife made the arrangement with mother as to the manner in which the profits and salary would be divided. When I came home I had an arrangement with my wife whereby she was to work with me and I was to have half and she was to have half.

The witness further testified:

Q. "As separate property?

A. As her own money.

Q. I understand the checks were made out to you?

(Testimony of Stanley S. Anderson.)

A. I made the checks out myself.

Q. Was their any particular reason they were made to yourself?

A. Just a matter of convenience.

Q. What did you and Mrs. Anderson do with the money you got from these profits?

A. Part of it went to enhance the investment we had there, we went ahead and improved five lots in Beverly Hills.

Q. You bought other real estate?

A. Bought and sold.

Q. As I understand the situation, the title to the various lots were taken in your name?

A. Yes, sir.

Q. Did Mrs. Anderson know it?

A. She didn't know until about two weeks ago." [93]

When I made various investments I always consulted with my wife. I did not always agree with her. If we couldn't agree I gave it up. Every investment I made was a joint agreement. My wife understood she had a half interest in the property to be held, a half interest in everything I had or we acquired between us.

My wife did not know about the way the title was held in these properties until several weeks ago. She discovered it after I had been in your office. I told her about it, about having a controversy about the income and told her these titles were in my own name. She said she wanted them in her name and

(Testimony of Stanley S. Anderson.)
I drew up a contract, we did, and I signed it. It was drawn up by her attorney. Those deeds have been recorded.

The witness further testified:

Q. "Now, you recall the arrangements that have been testified to already, with Mr. Christie and Mr. Janss for the real estate syndicate?

A. Yes, sir.

Q. Those agreements were made in your name, is that true?

A. Yes, sir.

Q. The original agreements were made in your name?

A. Yes, sir.

Q. Did Mrs. Anderson know about it at the time you carried on those conferences?

A. No, she only knew what I told her.

Q. She knew you were carrying on conferences?

A. Yes, sir.

Q. She didn't know whether the agreements were in your name or her name?

A. No, sir." [94]

I recall the occasion on which I gave my wife a letter dated December 5, 1923, that has been introduced in evidence. That came up in this fashion. During this negotiation we were talking about at different times it was so complicated I went to the bookkeeper of the Janss Investment Company and got him to give me a personal memorandum

(Testimony of Stanley S. Anderson.)

and I dictated a letter and showed what interests were covered by this agreement so she would know what her interest would be. I delivered that to her. Under that agreement she was to own one-half of my interest owned in this syndicate. She was to contribute half of the contributions and it was understood that she was to take half of the losses. Mrs. Anderson and I went to Mr. Janss' office and left a copy of that paper. We stated at that time that she had a half interest. Mr. Christie knew only what I told him verbally. My agreement with Mrs. Anderson as communicated to Mr. Janss and Mr. Christie was that she owned equally with me, one-half with me in those syndicate interests. In 1923 I put in that property about $56,000.00. That money came from hotel earnings. I had the lots mortgaged from time to time. That mortgage was introduced in evidence. The property has increased very much during the years. The occasion of putting a mortgage on it was that I may have needed money. Those lots were purchased in 1916, and we have improved part of them. Mrs. Anderson signed deeds, notes, mortgages, leases, and so forth, everything. I do not know of any occasion when she did not.

Cross-Examination.

I kept the various documents that I had from time to time relating to the various realty transactions, deeds, mortgages and notes, in a safety deposit box, in the bank in Beverly Hills. At one time

(Testimony of E. P. Adams.)
Janss Investment Company, so I asked him the status of the notes at the end of 1925 and he said part of them had been paid. I asked him how they had been paid, there being no checks and he said: "Mrs. Anderson and I have two syndicates and the profits of the syndicates have been applied against the notes."

I do not know whether each individual note has been introduced in evidence. One note is shown as coming in here of $20,000.00 in 1925 and it was $10,000.00 according to the Janss record. That had been credited to that note during the year 1925 as earnings from this syndicate. At that time I made a journal. This is the account I set up for Marguerite Anderson during the year 1925, rents received by her that come into the account. [97]

Whereupon there was then offered and received in evidence Petitioner's Exhibit No. 42, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 42 is a photostatic copy of ledger sheet relating to Janss Investment Company "joint M. S. Anderson account" which the witness has identified.

There was also then offered and received in evidence Petitioner's Exhibit No. 43, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit No. 43 is a photostatic copy of Marguerite S. Anderson account comprised of three pages.

I prepared the returns for Mr. and Mrs. Ander-

(Testimony of E. P. Adams.)

son for 1924 and 1925. They filed separate returns. The returns for the year 1925 included as income from the Janss Investment Company this $10,000.00 I just spoke of. I recall why it was that these profits that the Commission has found were not included for the year 1925. The full amounts were not included because my construction of the law was that cash to be accounted for was only where the cash was actually received. That is the reason the credits of the Janss Investment Company books were not carried in as income. I did not consult Mr. Anderson or Mrs. Anderson about it.

Cross Examination.

I prepared the returns of Mr. and Mrs. Anderson beginning with the year 1920. I heard the testimony this afternoon of Mrs. Anderson. I would say in explanation of the income tax returns of Mr. and Mrs. Anderson for the years 1920 to 1923, inclusive, that they were joint returns up to 1924 and beginning with 1924, and thereafter, separate returns were filed. I can explain that as follows: [98]

In 1920 when I was first engaged as auditor for the Beverly Hills Hotel, at that time I prepared the returns for the hotel and determined the family participation. Mr. Anderson asked me to make up his and Mrs. Anderson's returns, what they had outside of this profit. They had some little memos of what they had. Mr. Anderson said to me then that one-half of these earnings from the hotel belong to Mrs. Anderson, and should show

(Testimony of E. P. Adams.)

as a separate return. I said: "I can't do that under the husband ruling" which was in effect at that time. He wasn't satisfied with that so I marked on the return itself, showed the salaries of both with brackets. The following year I didn't put it on at all. I satisfied him at that time with marking it with brackets; it all showed on his return.

Redirect Examination.

I am not a lawyer. I was relying on regulations and rulings of the income tax commission.

Mr. PEELER: "Petitioner rests.

Mr. WILSON: Respondent rests."

The foregoing evidence is all of the material evidence adduced at the hearing before the United States Board of Tax Appeals, and the same is approved by counsel for petitioner-taxpayer.

[Sgd] WARD LOVELESS,

Counsel for Petitioner on Review. (S) [99]

The foregoing is all of the material evidence adduced at the hearing before the United States Board of Tax Appeals, and the same is approved by the undersigned as attorney for the respondent on review, the Commissioner of Internal Revenue.

(Sgd.) E. BARRETT PRETTYMAN

General Counsel, (S)

Bureau of Internal Revenue.

Approved and Ordered Filed this 22 day of Sept., 1933. C. M. Trammell, Member (s).

[Endorsed]: United States Board of Tax Appeals. Filed Sep. 22, 1933. [100]

PETITIONER'S EXHIBIT 1

THIS AGREEMENT, made and entered into in the City of Los Angeles, State of California, this 1st day of September, 1923, by and between JANSS INVESTMENT COMPANY, a corporation, organized and existing under the laws of the State of California, hereinafter designated as the "Seller", and CHARLES H. CHRISTIE, of said Los Angeles, hereinafter designated as the "Buyer",

WITNESSETH:

That for and in consideration of the respective covenants and agreements of the parties hereto, it is hereby agreed as follows:

1. The Seller agrees to sell and convey to the Buyer, and the Buyer agrees to purchase from the Seller all that certain piece or parcel of land situated in the City of Los Angeles, County of Los Angeles, State of California, being a portion of the Rancho San Jose De Buenos Ayres, containing one hundred and seven (107) acres more or less, more particularly described as follows:

> Beginning at the intersection of the southeasterly line of Lot ten (10), Block thirteen (13), as per map of the Rancho San Jose De Buenos Ayres, recorded in Book 26, pages 19

to 25, Miscellaneous Records of Los Angeles County, with the northwesterly prolongation of the center line of Greenfield Avenue, as per map of Tract No. 5609, Sheet No. 2, recorded in Book 60, pages 34, 35 and 36, of Maps, Records of Los Angeles County; thence northeasterly along said southeasterly line of Lot ten (10) and its northeasterly prolongation to the intersection of a line parallel with 100th Avenue and extending southeasterly from the southeasterly corner of Lot one (1), Block thirteen (13), said Rancho San Jose De Buenos Ayres; thence southeasterly along said parallel line with 100th Avenue, to the intersection with the southeasterly line of the most northerly [101] fifty (50) foot roadway of Santa Monica Boulevard; thence southwesterly along said southerly line of Santa Monica Boulevard to the intersection of the said northwesterly prolongation of the center line of Greenfield Avenue; thence northwesterly along said northwesterly prolongation of the center line of Greenfield Avenue to the point of beginning.

This agreement is made subject to all easements and other rights of record; and subject, also, to the right of the Seller to harvest the walnut crop now growing on said premises and to retain for its own benefit said crop or the proceeds therefrom.

That a map or plat of said property is hereto attached, marked "Exhibit A", and by this refer-

ence made a part hereof; said property being designated on said map or plat as Subdivision 1 and Subdivision 2.

2. The Buyer covenants and agrees to pay to the Seller as the full purchase price of said property the sum of Three Hundred and Twenty-one Thousand Dollars ($321,000.00), lawful money of the United States (subject to any small adjustments as hereinafter in this paragraph mentioned), to be paid in instalments as follows: Twenty-five thousand dollars ($25,000.00) in cash upon the execution and delivery of this agreement, the receipt of which is hereby acknowledged by the Seller; Twenty-five thousand dollars ($25,000.00) in cash on or before the first day of October, 1923; Fifty-seven thousand dollars $(57,000.00) on or before the 14th day of October, 1923; and the balance of said purchase price, namely, Two hundred and fourteen thousand dollars ($214,000.00) on or before the 14th day of October, 1926; provided, however, that at the time of the payment of the third payment in the amount of Fifty-seven thousand dollars ($57,000.00) hereinbefore provided for, and [102] provided said Buyer is not then in default of the performance of any of the terms and provisions of this contract, the said Buyer will have the right to receive from the Seller a good and sufficient grant deed conveying the property covered by this contract to the Buyer, or to his nominee or nominees. At the time that said Buyer requests such deed, he shall pay to the First National Bank of Los An-

geles, California, the said third payment of Fifty-seven Thousand Dollars ($57,000.00) in cash and deliver to the said First National Bank his promissory note in the amount of Two Hundred and Fourteen Thousand Dollars ($214,000.00), dated September 1, 1923, payable on or before three (3) years from its date, with interest thereon at the rate of seven per cent, (7%) per annum, payable semi-annually, said note to be secured by a first mortgage in the usual form upon all of the property covered by this agreement, together with any improvements thereon. The Seller may require from the Buyer two (2) notes in any amounts aggregating said sum of Two Hundred and Fourteen Thousand Dollars ($214,000.00) in place of one note as hereinbefore provided; and said Seller agrees to deliver, together with the deed herein provided for, a guarantee certificate of title, issued by either the Title Insurance and Trust Company, or the Title Guarantee and Trust Company, of Los Angeles, California, guaranteeing the said title in the amount of Three Hundred and Twenty-one Thousand Dollars ($321,000.00) to be vested in the grantor, free and clear of any and all liens or encumbrances, excepting only such as may be caused or suffered by the act or neglect of the Buyer and liens for taxes and assessments for the tax year 1923-24 and subsequent years. In case the Buyer does not demand the convey- [103] ance of said property as hereinbefore provided upon the payment of said third payment, said property will be conveyed to the Buyer by grant deed and certificate

of title as herein provided upon the full payment of the balance of the purchase price, with interest as herein provided. All payments due under this contract shall be paid to the Seller at its office, No. 404 Metropolitan Building, Fifth Street and Broadway, Los Angeles, California, (except the payment hereinbefore provided to be made to the First National Bank of Los Angeles), in lawful money of the United States. No interest shall be charged to the Buyer on the first three payments totalling one Hundred and Seven Thousand Dollars ($107,000.00) but the balance of said purchase price, namely, Two Hundred and Fourteen Thousand Dollars ($214,000.00), shall bear interest at the rate of seven per cent, (7%) per annum from the first day of September, 1923, payable semi-annually on the first day March and the first day of September of each year until the whole of said balance of the purchase price, with interest, has been paid; PROVIDED, HOWEVER, that the final payment, when made, shall include the full balance of interest then accrued. The Buyer is further given the right, if he desires to do so, to pay all or any portion of the instalments thereinbefore set forth at any time prior to the payment dates herein provided.

It is represented by the Seller that the property as above described, and with the southerly boundary of the same, including all of Santa Monica Boulevard north of Pacific-Electric Railroad right-of-way, contains one hundred and seven (107) acres, but, if said property contains more or less

than one hundred and seven (107) acres, the amount of said purchase [104] price will either be increased or decreased, as the case may be, at the rate of Three Thousand Dollars ($3,000.00) per acre for each number of acres or such portion of an acre as may be contained in said property either more or less than one hundred and seven (107) acres and a proper adjustment made therefor upon the final instalment of the purchase price to be paid by the Buyer.

3. The Buyer shall have and be entitled to the possession and use of said property from and after the date of the execution of this agreement and for such length of time as it shall perform the terms and conditions hereof to be by him performed.

4. (a) It is further understood and agreed, in consideration of the low price for the property hereby sold, that the said Buyer will either himself build or construct, or cause to be built or constructed by others, one motion picture studio either on Subdivision 1 or Subdivision 2 of the above described property on or before two (2) years from September 1, 1923, and said studio, when built and completed, shall be fully equipped and shall be operated in good faith as contemplated hereunder and shall be at least equal in general size and character (with proper allowance for the kind of pictures produced) to the present Christie studio on Sunset Boulevard, or the said Buyer may, in place of one studio, erect two studios, provided the combined size and general business of said two studios is equal in size and general charac-

ter to the one studio herein referred to; and in the event that said motion picture film studio is not constructed as herein provided, the Seller is hereby given the option, to be exercised within sixty (60) days from September 1, 1925, to re-purchase from the Buyer an [105] undivided two-thirds interest in the property covered by this agreement and not occupied by any studio or permanent improvement. The price to be paid for the two-thirds interest of the unoccupied property, which may be re-purchased hereunder by the Seller, shall be based upon the present valuation of the entire property covered by this agreement, taken at its present selling price, less the value to be agreed upon by the parties for the portions occupied by any studio or other improvements; it being contemplated herein that portions of said property fronting on boulevards, etc., have much greater value per acre than other portions; and if the said parties cannot agree upon the value of the portions so excluded, it shall be fixed by three (3) arbitrators, one each selected by the parties hereto, and a third by the two (2) so selected, and in case of a third arbitrator cannot be agreed upon by the two (2) so selected, he shall be selected by the then presiding judge of the Superior Court of Los Angeles County. Payment or adjustment shall also be made by the Seller for two-thirds (2/3) of all sums paid for taxes and interest upon the part re-purchased or re-acquired by the Seller hereunder.

(b) Prior to the erection of the studio or studios herein provided for in Paragraph (a) last above,

the Buyer may subdivide and sell property purchased by him hereunder under the following conditions:

(1) That a map of said subdivision shall be prepared which will meet with the approval of the Seller.

(2) That the minimum selling price of property in said subdivision fronting on Santa Monica Boulevard shall not be less than One Hundred Dollars ($100.00) per front foot and for property fronting on the proposed Westwood Boule- [106] vard, when opened as herein provided for, not less than Fifty-five Dollars ($55.00) per front foot.

(3) That until a studio or studios herein provided for have been erected, the entire purchase price received for lots or parcels of said property sold or agreed to be sold shall be dealt with as follows: There shall first be deducted therefrom commissions of not to exceed ten per cent, (10%) of the selling price and selling expenses not to exceed five per cent, (5%); that thereafter there shall be paid out of said sum to be applied upon the mortgage indebtedness for the balance of the purchase price of the land herein sold, the release prices provided for under this contract, and of the entire remaining balance of said sum one-third (1/3) shall be paid to the Seller and the other two-thirds (2/3) shall be impounded with a bank or trust company or other trustee satisfactory to the Seller to be held until the studio or studios hereinbefore provided for have been erected, and in case said studio or studios

are not erected as herein provided for, said two-thirds (2/3) so impounded and held by the bank or trust company or trustee, as the case may be, shall be paid over to the Seller free from any claim therein whatsoever on the part of the Buyer. Upon the studio requirements being met with as herein provided for, all impounded money will be released and turned over to the Buyer.

(4) That no sets or temporary buildings or structures of any kind or nature shall be permitted within one hundred and fifty (150) feet of Santa Monica Boulevard for a period of twenty-five (25) years.

(5) That any and all buildings erected on said property, or any portion thereof, for business purposes other than film studio structures shall cost and be reasonably [107] worth not less than Thirty-five hundred Dollars ($3,500.00) each and any residences erected thereon shall cost and be reasonably worth not less than Three Thousand Dollars ($3,000.00) each, and said restrictions in this paragraph mentioned shall continue for a period of twenty-five (25) years from the date of this agreement.

(5.) In the event the Buyer shall fail to perform either or any of the covenants or conditions herein contained to be performed by him, the Seller may, after thirty (30) days' notice of such default given to the Buyer, as hereinafter set forth, and provided the Buyer shall not within thirty (30) days after receipt of such notice remedy the default complained of by the Seller, declare the entire balance of the purchase price of said property, together with all interest thereon remaining unpaid, due

and payable, or the Seller may, after like notice, terminate all of the rights and privileges of the Buyer hereunder and, without demand or notice of any kind other than the thirty (30) days' notice herein provided for, re-enter and take possession of said property and remove all persons therefrom and may retain all moneys theretofore paid to it by the Buyer hereunder, provided, however, that said thirty (30) days' notice does not apply to the first three payments totalling One Hundred and Seven Thousand Dollars ($107,000.00) and said first payments must be made promptly at the time herein specified or the said Seller may forfeit all rights of the Buyer hereunder and retain all sums herein paid immediately and without any notice whatsoever, or may immediately declare the full unpaid balance of the purchase price due and payable.

6. That the Buyer shall, upon demand of the Seller, and at the Buyer's expense, dedicate or take such proceedings as may be necessary to procure the dedication, of a certain right-of-way for street purposes not more than eighty (80) feet in width, including the space provided for sidewalks over and across said property. Said right-of-way shall be located substantially upon the locations marked: "PROPOSED [108] WESTWOOD BOULEVARD" across said Subdivision 1 and Subdivision 2 on said "Exhibit A" hereto attached. The Buyer shall further, when said right-of-way shall have been dedicated, improve the street created thereby

by grading the same in accordance with the specifications and requirements of the City of Los Angeles, and, upon demand of the Seller, improve said street with cement sidewalks and curbs and surface said street with the same kind and quality of surfacing as the continuation of Westwood Boulevard to the north may then be surfaced with, it being contemplated that said street surface will be either "scarafying and oil" or asphalt and cement.

7. That the Buyer shall pay, before the same becomes delinquent, any and all taxes and assessments that may be hereafter levied or assessed against said property or any part thereof, and shall also pay ten-twelfths (10/12) of all city, county and state taxes of every kind levied or assessed thereon for the fiscal year beginning July 1, 1923, and all taxes thereafter; PROVIDED, HOWEVER, that, if the Buyer shall contest, by legal procedings, any tax, assessment, or governmental taxes which may be or become a lien on said premises, or any part thereof, he shall have the right, pending such contest, to delay or defer the payment thereof but not so as to lose the right to redeem said premises or the part thereof affected by said taxes, assessments or governmental charges from any sale thereunder. If the Buyer shall not pay such taxes, assessments or governmental taxes before the same become delinquent, and does not contest the same by legal proceedings as he may do under the terms hereof, then the Seller [109]

shall have the right at any time, and without notice to the Buyer, to pay any and all such taxes, assessments or charges, together with any costs, interests and penalties that may be added thereto, and any and all said amounts so paid by the Seller, together with interest thereon at the rate of seven per cent, (7%) per annum from the date of such payment, shall be repaid to the Seller by the Buyer on demand therefor. And the Buyer further agrees to keep said premises at all times free and clear of any mechanics' or other similar liens until such time as said property shall have been fully paid for under this agreement.

8. It is specifically understood and agreed, however, that nothing herein contained shall be deemed or construed to require the Buyer to pay any tax, assessment, lien or charge levied upon or against said property by reason of any act, neglect or failure on the part of the Seller, and in the event that the Buyer shall have been required to pay any such tax, assessment, charge or lien in order to protect the above described property or any interest therein against the lien thereof, the amount so paid by him shall be credited on the amount of the purchase price due to the Seller at the time of such payment.

9. That wherever in this agreement it is provided that one of the parties shall or may take such steps or proceedings as shall be necessary to accomplish the vacation or the dedication of any right-of-way, for a street or highway purpose, it shall be under-

stood that the other party hereto shall, at the request of the party in the execution of any and all documents, petitions, or other instruments necessary to accomplish the purpose mentioned, and if either of the parties shall at any time desire to record any map of said property or of the tracts immediately adjoining said property, the other party hereto shall join in approving or executing any such map to be so filed. [110]

10. It is contemplated by the parties hereto that the above property may be subdivided by the Buyer and be sold in parcels or in lots, free of encumbrances; and to that end the Seller will prepare or draft a map or subdivision plat of said property in accordance with the directions of the Owners, showing the location, boundaries and dimensions of all streets, alleys and lots, and shall designate each block and lot by number or other appropriate designation. A schedule of prices at which each lot designated on said map or plat will be released from the lien of any mortgage or encumbrance on said lots existing at date hereof, or created by Seller, or created by Buyer in favor of Seller, shall then be agreed upon by the Seller and Buyer. Said release prices shall be based upon the desirability of said lots as determined by their location and frontage and in any event will be so calculated that the total aggregate release price of said lots or parcels shall be equal to the sum of not less than Five Thousand Dollars ($5,000.00) per acre for all of said described property. Upon the

payment to the Seller of said release price, the Seller will convey said lot (or release from any existing mortgage) to the Buyer, free of all encumbrances. Said payment shall be applied upon unpaid balance of the purchase price of said hereinbefore described subdivision 1 and Subdivision 2.

11. That in computing the extent of the acreage that is sold hereunder, Santa Monica Boulevard north of the Pacific Electric Railroad right-of-way shall be included.

12. It is further agreed that neither the property hereby agreed to be sold nor any part thereof shall at any time hereafter be leased, rented, sold or conveyed to any person not of the White or Caucasian race, nor be used or [111] occupied by any person who is not of the White or Caucasian Race, but this provision shall not be taken or construed so as to prohibit or restrict the Buyer, or his successor or successors in interest, from employing persons who shall render services in, upon or about said property, who may not be of the White or Caucasian race, and if the duties and services of such employees shall require them to live upon said premises, such occupancy shall not be deemed or construed to be a violation of the terms hereof, provided that said servants or employees shall not acquire any title whatsoever in said property, and all deeds given hereunder shall contain all of the restrictions and conditions of user set out in this paragraph and in the foregoing agreement.

13. That the Seller shall be entitled to the free

rental of the ground occupied by its present tract office now located on said premises during the term of the existence of the selling agency given to the Seller under an agreement of even date, covering Subdivisions 3 and 4, between Janss Realty & Finance Company, Charles H. Christie, Stanley S. Anderson and Janss Investment Company, provided said free rental shall not continue for a period of over two (2) years from the date of this agreement and if the premises hereby occupied by said tract office shall be required by the Buyer or sold to other parties, said tract office may be moved at the Buyer's expense to some other location on Santa Monica Boulevard to be mutually agreed upon by the parties hereto with a like free rental for the term in this paragraph referred to.

14. That whenever any notice is to be given by either [112] of the parties hereto to the other, it shall be given by registered mail, addressed to the party who is to receive the same at the address set after the name of said party as follows:

Janss Investment Company, 404 Metropolitan Building, Los Angeles, California.

Charles H. Christie, 6101 Sunset Boulevard, Los Angeles, California.

15. That time is of the essence of each and all of the terms and provisions of this agreement.

16. That this agreement shall inure to the benefit and shall bind the heirs, devisees, executors, administrators, successors in interest, and assigns of the parties hereto.

IN WITNESS WHEREOF the Seller has hereunto caused its corporate name and *sale* to be hereunto affixed by its officers thereunto duly authorized, and the Buyer has signed his name hereto, the day and year first above written.

JANSS INVESTMENT COMPANY,
(Signed) By Edwin Janss Vice-President
(Signed) By Harold Janss Secretary
CHARLES H. CHRISTIE
(Signed) By Fred L. Porter
Attorneys in Fact. [113]

[Endorsed]: U. S. Board of Tax Appeals. Admitted in Evidence Jun 14 1932.

PETITIONER'S EXHIBIT 2.

COPY

THIS AGREEMENT made and entered into in the City of Los Angeles, State of California, this 1st day of September, 1923, by and between JANSS INVESTMENT COMPANY, a corporation, organized and existing under the laws of the State of California, hereinafter designated as the "Seller", and CHARLES H. CHRISTIE and STANLEY S. ANDERSON, hereinafter designated as the "Buyers",

WITNESSETH:

That for and in consideration of the respective covenants and agreements of the parties hereto, it is hereby agreed as follows:

1. The Seller agrees to sell and convey to each of the Buyers, and each of the Buyers agrees to purchase from the Seller, an undivided one quarter interest in and to that certain piece or parcel of land situated in the City of Los Angeles, County of Los Angeles, State of California, being a portion of the Rancho San Jose De Buenos Ayres, containing one hundred twenty and one-half (120½) acres, more or less, more particularly described as follows:

Subdivision No. 3. A parcel of land containing forty-five and five-tenths (45.5) acres, more or less, being a portion of the Rancho San Jose De Buenos Ayres, more particularly described as follows:

Beginning at the intersection of the southwesterly prolongation of the southeasterly line of Lots three (3) and ten (10), Block thirteen (13), as per map of Rancho San Jose De Buenos Ayres, recorded in Book 26, pages 19 to 25, Miscellaneous Records of Los Angeles County, with the center line of 100th Avenue; thence northeasterly along said southeasterly line of said Lots three (3) and ten (10) to the intersection with the northwesterly prolongation of the center line of Greenfield Avenue as per map of Tract No. 5609, Sheet 2, recorded in Book 60, pages 34, 35 and 36 of Maps, Records of Los Angeles County; thence southeasterly along said northwesterly prolongation of the center line of Greenfield Avenue to the

intersection with the southeasterly line of the most northerly fifty (50) foot roadway of Santa Monica Boulevard; thence southwesterly along said southeasterly line [114] of Santa Monica Boulevard and its southwesterly prolongation to the intersection of the center line of 100th Avenue; thence northwesterly along said center line of 100th Avenue to the point of beginning.

Subdivision No. 2. A parcel of land containing seventy-five (75) acres, more or less, being a portion of the Rancho San Jose De Buenos Ayres, more particularly described as follows:

Beginning at the intersection of the center line of Wilshire Boulevard with a line northeasterly from, distant thirty (30) feet at right angles to and parallel with the northeasterly line of Lots ten (10), eleven (11) and twelve, Block thirteen (13), as per map of Rancho San Jose De Buenos Ayres, recorded in Book 26, pages 19 to 25, Miscellaneous Records of Los Angeles County; thence northeasterly along said center line of Wilshire Boulevard to intersection with a line southwesterly from, distant thirty (30) feet at right angles to and parallel with the southwesterly line of Lot one (1) Block eighteen (18), said Map of the Rancho San Jose De Buenos Ayres; thence southeasterly along said line distant thirty (30) feet at right angles to and parallel with the southwesterly line of said Lot one (1) to the

southwesterly prolongation of the southeasterly line of said Lot one (1); thence northeasterly along the said southwesterly prolongation of the southeasterly line of said Lot one (1) and the southeasterly line of said Lot one (1) to the southeasterly corner of said Lot one (1); thence southeasterly parallel with the northeasterly line of 100th Avenue to the intersection with the northeasterly prolongation of the southeasterly line of Lots three (3) and ten (10), Block thirteen (13), said Rancho San Jose De Buenos Ayres; thence southwesterly along said northeasterly prolongation of the southeasterly line of said Lots three (3) and ten (10) to the intersection with said line northeasterly from, distant thirty (30) feet at right angles to and parallel with the northeasterly line of said Lots ten (10), eleven (11) and twelve (12); thence northwesterly along said line northeasterly from, distant thirty (30) feet at right angles to and parallel with the northeasterly line of said Lots ten (10), eleven (11) and twelve (12) to the point of beginning.

The parcels of land above described being more particularly shown outlined in red on the plat hereto attached and made a part hereof.

This agreement is made subject to all easements and other rights of record, and subject also to the right of the Seller to harvest the walnut crop now growing on said premises and to retain for its own benefit said crop or the proceeds therefrom.

That a map or plat of said property is hereto attached, marked "Exhibit A", and by this reference made a part hereof, [115] said property being designated on said map or plat as Subdivisions 3 and 4 as outlined in red thereon.

2. The Buyers covenant and agree to pay to the Seller, as the purchase price of said property, the total sum of One Hundred and Eighty Thousand Seven Hundred and Fifty Dollars ($180,750.) lawful money of the United States (subject to any small adjustment as hereinafter in this paragraph mentioned) to be paid in instalments as follows: Ten Thousand Dollars ($10,000.00) in cash upon the execution and delivery of this agreement, the receipt of which is hereby acknowledged by the Seller; Ten Thousand Dollars ($10,000.) in cash on or before thirty (30) days from the date hereof; and Forty Thousand, Two Hundred and Fifty Dollars ($40,250.) in cash on or before the 14th day of October, 1923; said last mentioned payment of Forty Thousand, Two Hundred and Fifty Dollars ($40,-250.) to be paid in escrow to the First National Bank of Los Angeles for the order of the Seller, to be paid over to the Seller by the said Bank upon delivery of a deed, or deeds, conveying title to said Purchasers as herein provided, together with a certificate of title; and that at the time of said payment, and as a condition precedent to receiving a deed, or deeds, to said property, the Purchasers agree to execute and deliver their several promissory note or notes aggregating in the case of each

purchaser, the sum of Sixty Thousand Two Hundred Fifty ($60,250.00) Dollars, payable to the Seller, dated September 1, 1923, payable on or before three (3) years from date, with interest thereon at the rate of seven per cent (7%) per annum, payable semi-annually, said note or notes to be secured by a first mortgage in the usual form upon the respective interests of the Buyers covered by this agreement, together with any improvements thereon; and the Seller is given the right to [116] require either one or two notes in any proportionate amounts from each of the Buyers covering their respective half portions of said total amount of One Hundred Twenty Thousand Five Hundred Dollars ($120,-500.); and said Seller agrees to deliver, together with the deed or deeds herein provided for, a guarantee certificate of title issued by either the Title Insurance and Trust Company or the Title Guarantee and Trust Company of Los Angeles, guaranteeing the said title in the amount of One Hundred Eighty Thousand Seven Hundred and Fifty Dollars ($180,750.) to be vested in the grantor free and clear of any and all liens or encumbrances, excepting only such as may be caused or suffered by the act or neglect of the Buyers, and liens for taxes and assessments for the tax year 1923-24 and subsequent years.

All payments due under this contract other than the said payment of Forty thousand Two Hundred and Fifty Dollars ($40,250.) (to be made at the First National Bank of Los Angeles as hereinbe-

fore provided) shall be paid to the Seller at its office No. 404 Metropolitan Building, Fifth Street and Broadway, Los Angeles, California, in lawful money of the United States. No interest shall be charged to the Buyers upon the first three cash payments totalling the sum of Sixty Thousand Two Hundred and Fifty Dollars ($60,250.) but the balance of said purchase price, namely, One Hundred Twenty Thousand Five Hundred Dollars ($120,-500.), shall bear interest at the rate of seven per cent. (7%) per annum from the 1st day of September, 1923, payable semi-annually on the first day of March and the first day of September of each year until the whole of said balance, with interest, has been paid, provided, however, that final payment, when made, shall include the full balance of interest then accrued. The Buyers are further given the right, if they desire to do so, to pay all or any portion of the instalments hereinbefore set forth, at any time prior to the payment dates herein provided. [117]

It is represented by the Seller that said property as above described, the northern boundary of the same being the center line of Wilshire Boulevard as to Subdivision No. 4, and the westerly boundary of Subdivision No. 3, being coincident with the center line of Military Road and the southerly line of Subdivision No. 3 including all of Santa Monica Boulevard north of the Pacific Electric right-of-way, contains one hundred twenty and one-half (120½) acres more or less. If said property shall

be found to contain less than said number of acres, then the amount of said purchase price shall be decreased at the rate of Three Thousand Dollars ($3,000.) per acre for such number of acres, or fraction thereof, as there may be found less than one hundred twenty and one-half (120½) acres, and, should said property be found to contain more than one hundred twenty and one-half (120½) acres, then said purchase price shall be in like manner increased. Said readjustment in price may be made at any time that said acreage shall be definitely determined and the readjustment in price shall be made at the time of the next succeeding payment of installment on account of the purchase price thereof.

3. That the Buyers shall have and be entitled to the possession and use of said property from and after the date and execution of this agreement and for such length of time as they perform the terms and conditions hereof to be by them performed, and may improve and use said property and may erect and construct buildings or other structures or improvements thereon for such purposes as they may desire during said period of time, subject to the provisions herein contained for the subdivision of said property.

The title to be conveyed to the Buyers herein, or [118] to their nominees, upon full performance by the Buyers of each and all of the terms and conditions of this contract shall be free and clear of any and all liens of any kind or nature whatsoever, clouds or encumbrances, excepting right-of-way

given to the City of Los Angeles for a pipe line in proposed Westwood Boulevard, and excepting, also, such as may be caused or suffered by the act or neglect of the Buyers, tax liens for the tax year 1923-24 and subsequent years and such as are otherwise herein provided.

In case the Buyers do not desire to obtain a deed to said property and to give back to the Seller their note and first mortgage as hereinbefore provided, the said Buyers may continue to make the payments hereinbefore provided for to the Seller at its place of business in the City of Los Angeles, and in such case said Buyers shall not be entitled to receive a deed to said property and certificate of title until the full purchase price has been paid to the Seller and full performance of all of the terms and conditions of this agreement have been complied with by the Buyers.

In the event the Buyers shall fail to perform any or either of the covenants or conditions herein contained to be performed by them, the Seller may, after thirty (30) days' notice of such default given to the Buyers as hereinafter set forth and provided the Buyers shall not, within thirty (30) days after receipt of such notice, remedy the default complained of by the Seller, declare the entire balance of the purchase price of said property, together with all interest thereon remaining unpaid, due and payable, or the Seller may, after like notice, terminate all of the rights and privileges of the Buyers hereunder and, without demand or notice of

any [119] kind other than the thirty (30) days' notice herein provided for, re-enter and take possession of said property and remove all persons therefrom and may retain all moneys theretofore paid to it by the Buyers hereunder, provided, however, that said thirty (30) days' notice does not apply to the first three payments totalling Sixty Thousand Two Hundred and Fifty Dollars ($60,-250) and said first payments must be made promptly at the time herein specified or the said Seller may forfeit all rights of the Buyers hereunder and retain all sums herein paid immediately and without any notice whatsoever, or may immediately declare the full unpaid balance of the purchase price due and payable.

4. That the Buyers shall, upon the demand of the Seller, and the seller shall, upon demand of the buyers, and at the expense of all the parties hereunder, in proportion to their several interests in said property, take such proceedings as may be necessary to procure the dedication of a certain right-of-way for street purposes not more than eighty (80) feet in width, including the space provided for sidewalks, over and across said property. Said right-of-way shall be located substantially upon the location marked "Proposed Westwood Boulevard across said Subdivision 3 and Subdivision 4 on said "Exhibit A" attached hereto. The parties hereto shall further, when said right-of-way shall have been dedicated, improve the street created thereby by grading the same in accordance with the specifica-

tions and requirements of the City of Los Angeles and by surfacing said street according to those specifications known as "scarafying and oil" or asphalt or cement as demanded by Seller.

5. That the Buyers shall pay, before the same becomes delinquent, any and all taxes and assessments that may be hereinafter levied or assessed against the said property, or any part [120] thereof, and shall also pay ten-twelfths (10/12) of the city, county and state taxes, or other taxes, levied on the property hereby purchased, for the fiscal year 1923-24. PROVIDED, HOWEVER, that if the Buyers shall contest by legal proceedings any tax, assessments or governmental charge which may be or become a lien on said premises, or any part thereof, they shall have the right, pending such contest, to delay or defer the payment thereof, but not so as to lose the right to redeem said premises or the part thereof affected by such taxes, assessments or governmental charges, from any sale thereunder. If the Buyers shall not pay such taxes, assessments or governmental charges before the same become delinquent, and do not contest the same by legal proceedings, as they may do under the terms hereof, then the Seller shall have the right at any time, and without notice to the Buyers, to pay any or all of said taxes, assessments or charges, together with any costs, interests and penalties that may be added thereto and any and all of said amounts, so paid by the Seller, together with interests thereon at the rate of seven per cent. (7%)

per annum from date of such payment shall be repaid to the Seller by the Buyers on demand therefor.

It is specifically understood and agreed, however, that nothing herein contained shall be deemed or construed to require the Buyers to pay any tax, assessment, lien or charge levied upon or against said property by reason of any act, neglect or failure on the part of the Seller, and in the event that the Buyers shall have been so required to pay any such tax, assessment, charge or lien, in order to protect the above described property or any interest therein against the lien thereof, the amount so paid by them shall be credited on the amount of the purchase price due to the Seller at the time of such payment. [121]

6. That wherever in this agreement it is provided that either the Seller or the Buyers shall or may take such steps or proceedings as shall be necessary to accomplish the dedication of any right-of-way for street or highway purposes, it shall be understood that the other party hereto shall, at the request of the party taking such steps or proceedings, join with such party in the execution of any and all documents, petitions or other instruments necessary to accomplish the purpose mentioned, and if either of the parties shall at any time desire to record any map of said property the other party hereto shall join in approving or executing any such map to be so filed.

7. That in computing the extent of the acreage that is sold herein, Subdivision 3 and Subdivision 4,

on the north half of Wilshire Boulevard, is included, on the west half of Military Road is included, on the south all of Santa Monica Boulevard north of Pacific Electric right-of-way is included.

8. It is contemplated by the parties hereto that the above property may be subdivided by the Buyers and be sold in parcels or in lots, free of encumbrances; and to that end the Seller will prepare or draft a map or subdivision plat of said property in accordance with the directions of the Owners, showing the location, boundaries and dimensions of all streets, alleys and lots, and shall designate each block and lot by number or other appropriate designation. A schedule of prices at which each lot designated on said map or plat will be released from the lien of any mortgage or encumbrance on said lots existing at date hereof, or created by Seller, or created by Buyer in favor of Seller, shall then be agreed upon by the Seller and Buyers. Said release prices shall be based upon [122] the desirability of said lots as determined by their location and frontage and in any event will be so calculated that the total aggregate release price of said lots or parcels shall be equal to the sum of not less than Five Thousand Dollars ($5,000.) per acre for all of said described property. Upon the payment to the Seller of said release price, the Seller will convey said (or release from any existing mortgage) lot to the Buyers free of all encumbrances. Said payment shall be applied upon the unpaid balance of the purchase price of said hereinbefore described Subdivision 1 and Subdivision 2.

9. It is further agreed that neither the property hereby agreed to be sold nor any part thereof shall at any time hereafter be leased, rented, sold or conveyed to any person not of the White or Caucasion race, nor be used or occupied by any person who is not of the White or Caucasion race, but this provision shall not be taken or construed so as to prohibit or restrict the Buyers, or their successor or successors in interest, from employing persons who shall render services in, upon or about said property, who may not be of the White or Caucasian race, and if the duties and services of such employees shall require them to live upon said premises, such occupancy shall not be deemed or construed to be a violation of the terms hereof, provided that said servants or employees shall not acquire any title whatsoever in said property, and all deeds given hereunder shall contain all of the restrictions and conditions of user set out in this paragraph and in the foregoing agreement.

10. That the Seller shall be entitled to the free [123] rental of the ground occupied by its present tract office now located on said premises during the term of the existence of the Selling agency given to the Seller under an agreement of even date covering Subdivisions 3 and 4 between the Janss Realty & Finance Company, Charles H. Christie, Stanley S. Anderson and Janss Investment Company, provided said free rental shall not continue for a period of over two (2) years from the date of this agreement and if the premises hereby occupied by

said tract office shall be required by the Buyer or sold to other parties, said tract office may be moved at the Buyers' expense to some other location on Santa Monica Boulevard to be mutually agreed upon by the parties hereto with a like free rental for the term in this paragraph referred to.

11. That whenever any notice is to be given by either of the parties hereto to the other, it shall be given by registered mail, addressed to the party who is to receive the same, at the address set forth after the name of said party as follows:

Janss Investment Company, 404 Metropolitan Building, Los Angeles, California.

Charles H. Christie, 6101 Sunset Boulevard, Los Angeles, California.

Stanley S. Anderson, Beverly Hills Hotel, Beverly Hills, California.

12. That it is expressly understood that said Christie and said Anderson, their successors and assigns, shall be severally and not jointly liable for the performance of any of the terms of this agreement provided to be performed by the Buyers, [124] and that this contract of said Buyers is for an undivided one-quarter (¼) interest in the same and in the title to the property created hereby, and that in the event of the failure of either of them to perform any term, covenant or condition hereof, the other shall have the right to perform such term, covenant or condition hereof, and such performance by either of said parties shall constitute a good and

sufficient performance of each and all of the terms and conditions hereof.

13. That time is of the essence of each and all of the terms and provisions of this agreement.

14. That this agreement shall inure to the benefit and shall bind the heirs, devisees, executors, administrators, successors in interest, and assigns of the parties hereto.

IN WITNESS WHEREOF the Seller has hereunto caused its corporate name and seal to be hereunto affixed by its officers thereunto duly authorized, and the Buyers have signed their names hereto, the day and year first above written.

JANSS INVESTMENT COMPANY,
(Signed) By Edwin Janss Vice President.
(Signed) By Harold Janss Secretary.
(Signed) CHARLES H. CHRISTIE
By Fred L. Porter
Attorney in Fact
(Signed) Stanley S. Anderson

[Endorsed]: U. S. Board of Tax Appeals. Admitted in Evidence Jun 14, 1932. [125]

PETITIONER'S EXHIBIT 3.

COPY

THIS AGREEMENT made and entered into, in the City of Los Angeles, State of California, this 10th day of September, 1923, by and between JANSS INVESTMENT COMPANY, a California

corporation, CHARLES H. CHRISTIE and STANLEY S. ANDERSON, hereinafter called "Owners", and JANSS REALTY & FINANCE COMPANY, a corporation, organized and existing under the laws of the State of California, hereinafter called the "Agent",

WITNESSETH:

WHEREAS the Janss Investment Company has, by an agreement of even date herewith, agreed to sell to Charles H. Christie and Stanley S. Anderson an undivided one-quarter interest to each in the real property hereinafter more particularly described; and

WHEREAS said Janss Investment Company and Charles H. Christie and Stanley S. Anderson desire to have the Janss Realty & Finance Company, a California corporation, act as the exclusive selling agent for the purpose of subdividing, improving and selling the whole of said property including both the undivided one-half interest of the Janss Investment Company and the undivided one-quarter interest each of said Charles H. Christie and Stanley S. Anderson;

NOW, THEREFORE, in consideration of the premises and of the covenants, terms and conditions to be performed by the respective parties hereto, it is hereby agreed;

First: That the Agent is hereby appointed the agent of the Owners for the purpose of subdividing, improving and selling, as hereinafter provided, with such powers, authority and duties and subject to

such limitations and conditions as are hereinafter mentioned, the following described real property, hereinafter called "said property", situate in the City of Los Angeles, [126] County of Los Angeles, State of California, being a portion of the Rancho San Jose De Buenos Ayres, and more particularly described as follows, to-wit:

Subdivision No. 3. A parcel of land containing forty-five and five-tenths (45.5) acres, more or less, being a portion of the Rancho San Jose De Buenos Ayres, more particularly described as follows:

Beginning at the intersection of the southwesterly prolongation of the southeasterly line of Lots three (3) and ten (10), Block thirteen (13), as per map of Rancho San Jose De Buenos Ayres, recorded in Book 26, Pages 19 to 25, Miscellaneous Records Los Angeles County, with the center line of 100th Avenue; thence northeasterly along said southeasterly line of said lots three (3) and ten (10) to the intersection with the northwesterly prolongation of the center line of Greenfield Avenue, as per Map of Tract No. 5609, Sheet 2, Recorded in Book 60, Pages 34, 35 and 36 of Maps, Records of Los Angeles County; thence southeasterly along said northwesterly prolongation of the center line of Greenfield Avenue to the intersection with the southeasterly line of the most northerly fifty (50) foot roadway of Santa Monica Boulevard; thence southwesterly along

said southeasterly line of Santa Monica Boulevard and its southwesterly prolongation to the intersection of the center line of 100th Avenue; thence northwesterly along said center line of 100th Avenue to the point of beginning.

Subdivision No. 4. A parcel of land containing seventy-five (75) acres, more or less, being a portion of the Rancho San Jose De Buenos Ayres, more particularly described as follows:

Beginning at the intersection of the center line of Wilshire Boulevard with a line northeasterly from, distant 30 feet at right angles to and parallel with the northeasterly line of Lots 10, 11, and 12, Block 13, as per Map of Rancho San Jose De Buenos Ayres, recorded in Book 26, Pages 19 to 25, Miscellaneous Records of Los Angeles County; thence northeasterly along said center line of Wilshire Boulevard to intersection with a line southwesterly from, distant 30 feet at right angles to and parallel with the southwesterly line of Lot 1, Block 18, said Map of the Rancho San Jose De Buenos Ayres; thence southeasterly along said line distant 30 feet at right angles to and parallel with the southwesterly line of said Lot 1 to the southwesterly prolongation of the southeasterly line of said Lot 1; thence northeasterly along the said southwesterly prolongation of the southeasterly line of said Lot 1 and the southeasterly line of said Lot 1 to the southeasterly

corner of said Lot 1; thence southeasterly parallel with the northeasterly line of 100th Avenue to the intersection with the [127] northeasterly prolongation of the southeasterly line of Lots 3 and 10, Block 13, said Rancho San Jose De Buenos Ayres; thence southwesterly along said northeasterly prolongation of the southeasterly line of said Lots 3 and 10 to the intersection with said line northeasterly from, distant 30 feet at right angles to and parallel with the northeasterly line of said Lots 10, 11 and 12; thence northwesterly along said line northeasterly from, distant 30 feet at right angles to and parallel with the northeasterly line of said Lots 10, 11 and 12, to the point of beginning.

The parcels of land above described being more particularly shown, outlined in red, on the plat hereto attached and made a part hereof.

Second: That the Agent shall forthwith survey or cause said property to be surveyed and prepare and draft a practical map or subdivision plat of a portion of said property, and shall submit said map or plat to the Owners for their approval within 10 days from the date hereof. In the event that said map or plat should be in any respect unsatisfactory to the Owners, the Agent shall immediately proceed to change, alter or redraft said map or plat or prepare a new map or plat in accordance with the directions of the Owners, and with due diligence

prosecute same to completion, and submit to the Owners for their approval. Said map or plat shall show the location, boundaries and dimensions of all streets, alleys and lots, and shall designate each block and lot by number or other appropriate designation.

Third: That upon the acceptance of said map or plat by the Owners, the agent shall use its best efforts to comply or cause compliance to be made with the provisions of the laws of the State of California respecting the preparation, approval and recording of maps of subdivisions of lands into lots for the purpose of sale, including the recording of said map or [128] plat in the office of the County Recorder of the County of Los Angeles.

Fourth: That the Agent shall prepare and submit to the Owners for their approval, not later than ten (10) days from and after the recording of said map or plat, a budget in itemized and detailed form, showing the estimated actual cost of the subdivision and improvement of said property, including a detailed statement of the character, nature and extent of all improvements to be made. In the event said budget shall be unsatisfactory to the Owners in any particular, the Agent shall forthwith prepare and submit to the Owners for their approval a new budget in accordance with the directions of the Owners.

Fifth: That the Agent shall, upon the acceptance of said budget by the Owners, forthwith proceed to subdivide and improve said property in accordance

with said map or plat and said approved budget, and diligently prosecute the subdivision and improvement of said property to completion.

Sixth: That the Agent shall at all times actively and diligently manage, direct and supervise in all particulars the subdivision and improvement of said property, and use its best efforts in that regard.

Seventh: That the Agent shall utilize, in the subdivision and improvement of said property, all grading and road building equipment and machinery, cement mixers, engineering and surveying equipment, and all other machinery or equipment of whatsoever nature capable of use in the subdivision and improvement of said property of which it may be the owner or to the possession and use of which it may be lawfully entitled. The Agent shall be entitled, as compensation for the [129] use of such property, such reasonable rental or sums as shall be authorized by the budget of costs of subdivision and improvement approved by the Owners.

The Agent shall also utilize in connection with the subdivision and improvement of said property, the services of such engineers, surveyors, foremen and laborers in its employ, available for such purpose, as may be needed, and shall be entitled to compensation therefor in accordance with the provisions of Section Eighth hereof.

Eighth. That the Owners shall pay upon demand, when and as incurred, the actual cost of the

subdivision and improvement of said property as set forth in and authorized by the approved budget of subdivision and improvement, and the Agent shall be without authority to incur, as agent for, on behalf of, or impose upon the Owners, any liability for any purpose which shall not be specifically authorized by the provisions of said approved budget, and the owners shall incur no liability whatever to the Agent or to any other person, firm or corporation for any money expended or obligations incurred by the Agent not specifically authorized by the terms of said approved budget.

Ninth: That as compensation to the Agent for all services it may render in connection with the supervision, direction and management of the subdivision and improvement of said property, the Owners shall pay to the Agent a sum equal to ten per centum (10%) of the actual cost of the labor and materials used in such subdivision and improvement, provided that the cost of labor and materials and all other expenses incurred in connection with the installation of gas, water and electricity, including excavations, conduits, pipes, wires and poles, shall not be considered as a basis for determining such compensation, or computed as a part of said cost, and the agent shall be entitled [130] to no percentage of the cost and/or expense paid or incurred in connection with such installation of gas, water and electricity, and provided, further, that only such items of cost shall be considered in making up the basis for such compensa-

tion as shall have been specifically authorized in said approved budget. The Owners shall pay to the Agent said compensation within thirty (30) days after the final completion of each unit of the subdivision and improvement of said property, and the acceptance of same by the Owners.

Tenth: That the Agent shall prepare and submit to the Owners for their approval, not later than ten (10) days from and after the recording of said map or plat, a budget, hereinafter called the "sales budget", in itemized and detailed form, showing the nature, amount and estimated cost of advertising for sale the lots of the subdivision of said property; the estimated cost of selling said lots; the minimum selling price of each and all of said lots, and an estimate of the ultimate profit expected to be derived from the sale of said property as subdivided. Said budget shall specify the conditions and terms upon which sales of said lots shall be made, and shall also specify the amounts of all salaries, commissions and compensation to be paid to the sales managers, agents and subagents, and the minimum and maximum number of sales managers, agents and subagents to be employed or engaged in the sale of the lots of said subdivision. In the event said budget shall be unsatisfactory to the Owners in any particular, the agent shall forthwith prepare and submit to the Owners for their approval a new budget in accordance with the direction of the Owners.

Eleventh: That the Agent shall, upon the acceptance of said sales budget by the Owners, proceed

to advertise for sale and sell the lots of said subdivision in accordance with [131] said approved sales budget and the instructions and directions of the Owners.

Twelfth: That the Agent shall at all times actively and diligently manage, direct, and supervise in all particulars the sale of the lots of said subdivision and the advertisement thereof for sale, and use its best efforts in that regard, and shall employ or engage for that purpose such sales managers, agents and subagents as shall be necessary to promptly and efficiently sell said lots, in accordance with the provisions of the approved sales budget.

Thirteenth: That the Owners shall pay, upon demand when and as incurred, the actual cost of advertising for sale the lots of said subdivision as set forth in and authorized by said approved sales budget, and the Agent shall be without authority to incur as agent for on behalf of, or impose upon, the Owners, any liability for any purpose which shall not be specifically authorized by the provisions of said approved sales budget, and the Owners shall incur no liability whatever to the Agent or to any other person, firm or corporation for any money expended or obligations incurred by the Agent which shall not have been specifically authorized by the terms of said approved sales budget.

Fourteenth: That the Agent shall be authorized to pay from the proceeds derived from the sale of the lots of said subdivision to such sales managers, agents and subagents as it shall engage or employ

in connection with the sale of the lots of said subdivision, in accordance with the provisions of said approved sales budget, such salaries, commissions and compensation as shall be specifically authorized by the provisions of said approved sales budget, and the Agent shall be without authority to pay from the proceeds derived from the [132] sale of the lots of said subdivision, or from any other source or funds, any money, or incur as Agent for, on behalf of, or impose upon the Owners any liability whatever for salaries, commissions or compensation which shall not have been specifically authorized by the provisions of said approved sales budget, and the Owners shall incur no liability whatever to the Agent or to any other person, firm or corporation, whether said person, firm or corporation shall be engaged or employed by the Agent in connection with the sale of the lots of said subdivision or not, for any money expended or obligations incurred by the Agent, whether said money or obligation shall represent salaries, commissions or compensation or not, which shall not have been specifically authorized by the terms of said approved sales budget.

Fifteenth: In the event the proceeds derived from the sales of said lots shall be insufficient to pay the salaries, commissions or compensation mentioned in Section Fourteenth of this agreement, then the Owners shall pay to the Agent, upon demand, the amount of such deficiency.

Sixteenth: That as compensation to the Agent for all services it may render in connection with the

supervision, direction and management of the sale of the lots of said subdivision, and the advertisement thereof for sale, the Owners shall pay to the Agent a sum equal to ten per centum (10%) of the gross amount of cash, when and as received from the sale of the lots of said subdivision. Said compensation shall be payable to the Agent on the 15th day of each and every calendar month, and shall be based upon the gross amount of cash received from the sale of said lots during the next preceding calendar month. [133]

Seventeenth: That the Agent shall have no authority to sell, offer for sale or negotiate for the sale of, or obligate or attempt to obligate the Owners to sell any lot of said subdivision for a price less than, or upon terms different from, that prescribed in the approved sales budget unless expressly authorized so to do by the Owners.

That all deeds, contracts and other instruments relating to the sale of any of the lots of said subdivision, shall be signed, executed and delivered by the Owners, provided, however, that the said Agent shall have, and it is hereby given, full authority to sign, execute and deliver sales agreements for the sale of any of said property.

That all contracts, notes, mortgages, deeds of trust and other instruments relating to the sale of any of the lots of said subdivision shall be made in the name of the Owners, and by the terms thereof all moneys due thereunder shall be payable to the Owners or to their order or assignee.

That forthwith upon receipt of same, the Agent shall deliver, without demand, to the Owners all executed contracts, mortgages, notes, deeds of trust and other instruments relating to the sale of any of the lots of said subdivision.

Eighteenth: That the Agent shall collect when and as payable all moneys due to the owner in connection with the sale of any of the lots of said subdivision or otherwise, including moneys due under contracts, notes mortgages and deeds of trust.

Nineteenth: That the Agent shall pay to the Owners, without demand, on the 15th day of each and every calendar month the total amount of all moneys collected by the Agent in its capacity as agent hereunder during the next preceding calendar month, after deducting therefrom all moneys actually expended by the Agent under the authority of the Owners, or [134] under the authority of any approved budget, and after deducting such commissions or compensation as may be payable to the Agent under the terms of this agreement.

Twentieth: That the Agent will keep proper books of Record and account in which full, true and correct entries will be made of all dealings or transactions of the Agent under the provisions of this contract and in relation to the subdivision, improvement and sale of said property. That the Owners or any person appointed by them may at all reasonable times inspect and examine all books, accounts, vouchers, documents and records of the Agent, respective or relating to any and all dealings or trans-

actions of the Agent under the provisions of this contract and the subdivision, improvement and sale of said property.

Twenty-first: That the Agent will, on or before the 15th day of each and every calendar month, prepare and deliver to the Owners, a full, true and correct statement, in itemized and detailed form, of all moneys collected and expended, of all sales made, commissions paid or due, of all liabilities incurred, and other transactions under the terms of this contract and in respect of the subdivision, improvement and sale of said property during the next preceding calendar month.

Twenty-second: That the Agent will, within six months from and after the date hereof, and thereafter within six months from and after the date of the last preceding audit, have a detailed examination and audit made of all books, records and accounts which it is required to keep hereunder, and of all dealings and transactions under the provisions of this contract and in relation to the subdivision, improvement and sale of said property, by a certified public accountant satisfactory to the Owners. A detailed statement and report of every such audit shall be delivered to the Owners immediately upon the completion of the same. [135]

Twenty-third: That the Owners shall, at their option, anything in this agreement contained to the contrary notwithstanding, have the right at any time, or from time to time, to change, modify, alter, terminate or annul any approved budget, or any one

or more items or matters contained in any approved budget, it being the intention of the parties hereto that the Agent shall at all times be subject to the direction and control of the Owners, and that the Agent shall act at all times strictly in accordance with the directions of said Owners insofar as said directions shall not conflict with the terms of this agreement.

Twenty-fourth: That the agency hereby created shall exist and continue for a period of two years from and after the date hereof, provided that the Owners may, at their option, renew and continue said agency for two successive additional periods of one year each.

Twenty-fifth: That the agent shall provide, without compensation except as herein otherwise expressly provided, the services of Edwin Janss and Harold Janss in connection with the direction, supervision and management of the subdivision, improvement and sale of said property, it being understood and agreed that said Edwin Janss and Harold Janss shall actively direct, supervise and manage the subdivision, improvement and sale of said property, and in the event the Agent shall fail, refuse or be unable to comply with the provisions of this Section for any reason or cause whatsoever, whether such reason or cause be beyond the control of the Agent or not, the Owners shall have the right, at their option, to terminate the agency hereby created on thirty (30) days' notice to the Agent.

Twenty-sixth: That the Owners shall pay to the Agent, upon demand, when and as incurred, the

actual cost to the Agent [136] of all clerical, bookkeeping and auditing service actually and necessarily performed under this agreement, upon such terms and not to exceed such an amount as may be specified in any approved budget or any written instructions of the Owners.

Twenty-seventh: That the Agent shall be entitled to receive no compensation except as herein-otherwise expressly provided:

Twenty-eighth: That the Agent shall hold the Owners harmless from any liability incurred by any act of the Agent which shall not have been specifically authorized or ratified by the Owners.

Twenty-ninth: That the term "Approved budget" or "approved budget of subdivision and improvement" or "approved sales Budget" shall be deemed to include any budget so designated which shall have been approved by the Owners, and any amendatory or supplemental budget so designated which shall have been so approved, and written instructions from the Owners, shall have the same force and effect hereunder as though the matters therein contained were incorporated in any approved budget. That the term "approved budget" shall, where not inconsistent with the context, be deemed to include any approved budget of subdivision and improvement and any approved sales budget.

Thirtieth: It is contemplated and intended by the parties hereto that said property shall be platted, subdivided improved and sold in separate units or parcels, and that the provisions of this contract, and

each section thereof, shall apply to and be operative in connection with each successive unit or parcel as the same may be platted, subdivided, improved and sold.

The boundaries and extent of each unit or parcel, the order in which said units shall be platted, subdivided, [137] improved and sold, and the time within which the Agent shall prepare and draft a map or subdivision plat of each such unit or parcel and submit said map or plat to the Owners for their approval, shall be determined by the Owners.

That the term "said property" shall apply to and include each unit or parcel thereof.

Thirty-first: It is understood that Charles H. Christie and Stanley S. Anderson as hereinbefore set forth are purchasing an undivided one-quarter interest each in the property covered by this agreement as set forth in that certain contract, dated September 1, 1923, by and between Janss Investment Company, therein designated as the "Seller" and Charles H. Christie and Stanley S. Anderson therein designated as the "Buyers", and it is understood and agreed that nothing contained in this contract shall be so construed as to be inconsistent with the terms and conditions of said agreement.

Thirty-second: It is further understood and agreed that the Janss Investment Company will, as between itself and Charles H. Christie and Stanley S. Anderson, pay and bear one-half of the expenses of subdividing and improving the property covered by this agreement and also its proportionate

share of other expenses required in the carrying out by the Agent of this agreement.

IN WITNESS WHEREOF, the Owners have hereunto signed their names, and the Agent has caused its corporate name and seal to be hereunto affixed by its officers thereunto duly [138] authorized, the day and year in this agreement first above written.

Charles H. Christie
(Signed) By Fred L. Porter
Attorney in Fact
(Signed) Stanley S. Anderson
Owners.
JANSS INVESTMENT COMPANY
(Signed) By Edwin Janss Vice President
(Signed) By Harold Janss Secretary
Owners.
JANSS REALTY & FINANCE COMPANY
(Signed) By Harold Janss President
(Signed) By Edwin Janss Secretary
Agents

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun. 14, 1932. [139]

PETITIONER'S EXHIBIT 4.

Los Angeles, California.
November 7, 1923.

Mr. Charles H. Christie,
6101 Sunset Boulevard,
Hollywood, California.

In re: Agreement entered into between yourself, and the Janss Investment Company,—on the first day of September, 1923.

In said agreement, on page 5, it is provided that you erect, or cause to be erected, one or more motion picture studios on or before two years from September 1, 1923. Failure to erect said studios gives the Janss Investment Company the option to re-purchase a two-thirds interest in said property. Realizing that labor or financial conditions, or other conditions not within your control might arise to delay said construction, we agree to eliminate the two year period within which this studio or studios are to be erected, relying on your good faith in erecting this studio or studios as early as conditions will permit. We also hereby waive the option given to us in this contract to re-purchase a two-thirds interest in the property not permanently improved, relying solely upon your agreement to build such studio or studios as early as conditions will permit, as hereinabove stated.

You have reserved from these lands thirty-seven acres, more or less, as the film studio location. The balance of said lands you desire to subdivide and

have sold the Janss Investment Company a one-third interest therein and have entered into selling agreement with them to dispose of this property. It is specifically understood that, except in the particulars herein set forth, the agreement of September 1, 1923, is in no wise altered, modified or changed in any particulars whatsoever.

Furthermore, relative to the thirty-seven acres that you have reserved for studio purpose,—if you find that you do not [140] need all of this acreage and should desire to subdivide a portion of the same, you are at liberty to do so, providing that the same is not put on the market for a period of one year from September 1, 1923. The provision contained in this agreement above mentioned, requiring an impounding of any amounts realized from any such sale is hereby expressly waived.

This memorandum is given to you as part consideration for the sale to us of the third interest hereinabove mentioned.

JANSS INVESTMENT COMPANY
By ....
Vice President.

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun 14, 1932. [141]

PETITIONER'S EXHIBIT 5.

Certified Copy Order No. 493

Book 3532 Page 398 of Official Records.

(U.S.I.R.S. $115.50 Cancelled)

DEED

HOLMBY CORPORATION, a corporation organized under the laws of the State of California, with its principal place of business at Los Angeles, California, in consideration of Ten & No/100 Dollars ($10.00) to it in hand paid, receipt of which is hereby acknowledged, does hereby Grant to Janss Investment Company, a corporation, an undivided one-half interest in the real property in the City of Los Angeles, County of Los Angeles, State of California, described as:

All of Tract No. 7514 as per map recorded in Book 80 Pages 81 and 82 of Maps, in the office of the County Recorder of said County.

Also a parcel of land including a portion of Block 14 of the Rancho San Jose De Buenos Ayres, as per map recorded in Book 26 Pages 19 to 25 inclusive, Miscellaneous Records of said County; and a portion of Tract No. 7803, Sheets 1 to 5 inclusive, as per map recorded in Book 85 Pages 59 and 60 of Maps, and in Book 88 Pages 73 to 75 inclusive, of Maps, Records of said County, lying within the following described boundary:

Beginning at the intersection of the center line of Wilshire Boulevard with a line parallel with and distant North Easterly, 30 feet measured at right angles from the North Easterly line of Lots 10, 11 and 12 in Block 13 of said Rancho; thence North

Easterly along said center line of Wilshire Boulevard to the North Westerly prolongation of the North Easterly line of the first alley North Easterly of Westwood Boulevard, as shown on said map of Tract No. 7803, sheet 2; thence South 35° 40′41″ East, 607.15 feet to the Northerly line of said Tract No. 7803; thence North 72°04′08″ East, 629.64 feet to the most Easterly corner of Lot 1, Block 18 of said Rancho; thence parallel with 100th Avenue, south 35° 38′ 20″ East to a line parallel with and North Westerly, 1875.01 feet measured at right angles from the most Northerly line of Santa Monica Boulevard, as shown on Map of Tract No. 5609, recorded in Book 60 [142] Pages 34, 35, and 36 of Maps, in the office of the County Recorder of said County; thence South 71° 33′ 20″ West along said last mentioned parallel line to the parallel line first above described; thence North Westerly along said parallel line to the point of beginning.

This conveyance is made, however, upon the following conditions and restrictions, which shall run with all of said land, shall operate as conditions subsequent, and shall apply to and bind the grantee its successors, personal representatives and assigns and all other persons acquiring any interest in said land, either by operation of law or in any manner whatsoever, namely:

(1) That all that part of said land lying within 150 feet of Wilshire Boulevard shall be used only for residence purposes, including hotels, apartment houses, flats and duplex houses, at all times prior to January 1st, 1949.

(2) That no building which is to be used for residence purposes, shall ever be erected or permitted on any part of said land, which shall cost and be reasonably worth less than $3,000.00 at any time prior to January 1st, 1949.

(3) That no building which is to be used for business purposes, shall ever be erected or permitted on any part of said land which shall cost and be reasonably worth less than $3500.00, at any time prior to January 1st, 1949.

(4) That no part of said land shall ever be leased, rented, sold or conveyed to any person who is not of the White or Caucasian race, or be used or occupied by any person who is not of the White or Caucasian race, but this restriction is not intended to, nor shall it prevent persons legally in possession of any part of said land from employing persons of other than said white or Caucasian race, and providing living quarters for such employees on said land.

(5) That no oil or gas well shall ever be drilled or constructed on any part of said land. [143]

State of California,
County of Los Angeles—ss.

I hereby certify the foregoing to be a full, true and correct copy of the instrument appearing recorded in Book No. 3532 of Official Records Page 398, Records of Los Angeles County, and that I have carefully compared the same with the original record.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed my Official Seal, this 10 day of June, 1932.

[Seal] C. L. LOGAN, County Recorder
By I. Cady, Deputy (9) [144]

SUBJECT to easements for street purposes over Wilshire Boulevard, and all streets shown on map of said Tract No. 7803, lying within the above described boundaries.

SUBJECT also to easement and right of way given to the City of Los Angeles by the Pacific-Southwest Trust & Savings Bank and the Holmby Corporation, recorded in Book 2410 Page 163 Official Records, and in Book 2462 Page 127, Official Records.

SUBJECT ALSO to Taxes for the fiscal year 1924-1925.

TO HAVE AND TO HOLD to said grantee, its successors or assigns, forever.

IN WITNESS WHEREOF, said Corporation has caused its corporate name and seal to be affixed hereto and this instrument to be executed by its President and Secretary thereunto duly authorized, this 5th day of November, 1924.

[Corporate Seal] HOLMBY CORPORATION
By Malcolm McNaghten, Secretary.

State of California,
County of Los Angeles—ss.

On this 2nd day of December, 1924, before me, Wm. J. Walters, a Notary Public in and for said County, personally appeared Malcolm McNaghten, known to me to be the Secretary of the HOLMBY

CORPORATION, the corporation that executed the within and foregoing instrument, and known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

WITNESS my hand and official seal.

[Notarial Seal] WM. J. WALTERS,

Notary Public in and for said County and State.

#46. Copy of original recorded at request of Title Insurance & Tr. Co. Dec. 17, 1924, at 8:30 A.M. Copyist #16. Compared.

[Seal] C. L. LOGAN, County Recorder,
by E. B. Whaley, Deputy.

[Endorsed]: United States Board of Tax Appeals. Admitted in Evidence Jun 14, 1932. [145]

PETITIONER'S EXHIBIT 6.

Certified Copy Order No. 490

Book 2867 Page 210 of Official Records.
U.S.I.R.S. $138.50 Affixed and Cancelled.

GRANT DEED (Code)

Corporation.

Holmby Corporation, a Corporation duly organized and existing under and by virtue of the laws of the State of California, and having its principal place of business in the City of Los Angeles, County of Los Angeles, and State of California. For and in Consideration of the Sum of Ten and No/100 ($10.00) Dollars, the receipt whereof is hereby ac-

knowledged, does hereby Grant to Charles H. Christie, a single man, an undivided one-quarter (¼) interest, and Stanley S. Anderson, an undivided One-quarter (¼) interest, in all that real property, situated in the County of Los Angeles, State of California, described as follows, to-wit: Parcel #1: That portion of the subdivision of the Rancho San Jose De Buenos Ayres, as per map recorded in Book 26, Pages 19 to 25, Miscellaneous records of said County, described as follows:

Beginning at the intersection of the center line of 100th Avenue, (formerly Military Avenue) with the Westerly prolongation of the Northerly line of the Pacific Electric Railway right of way, as shown on map of Tract No. 5609, recorded in Book 76, Pages 68 to 71 inclusive, of Maps, in the office of the County Recorder of said County; thence along the center line of 100th Avenue North 35° 38′ 20″ West 2015.07 feet; thence parallel with Santa Monica Boulevard North 71° 33′ 20″ East 1003.87 feet; thence parallel with 100th Avenue South 35° 38′ 20″ East 2015.07 feet to the Northerly line of said right of way; thence Westerly 1003.87 feet along said Northerly line of said right of way to the point of beginning.

Parcel #2: That portion of said subdivision of the Rancho San Jose de Buenos Ayres, in said City, described as follows: [146]

Beginning at the intersection of the center line of Wilshire Boulevard with a lien parallel with and distant Northeasterly 30 feet measured at right angles from the Northeasterly line of Lots 10, 11 and

12, in Block 13, of said Rancho; thence Northeasterly along said center line of Wilshire Boulevard to a line parallel with and distant Southwesterly 30 feet measured at right angles from the Southwesterly line of Lot 1, in Block 18, of said Rancho; thence Southeasterly along said last mentioned parallel line to the Northwesterly prolongation of the Southeasterly line of said Lot 1; thence Northeasterly along said prolongation and Southeasterly line of said Lot 1 to the most Easterly corner of said Lot 1; thence parallel with 100th Avenue South 35° 38′ 20″ East to a line parallel with and North westerly 1875.01 feet, measured at right angles from the most Northerly line of Santa Monica Boulevard, as shown on map of said Tract No. 5609; thence South 71°33′20″ West along said last mentioned parallel line to the parallel line first above described; thence Northwesterly along said parallel line to the point of beginning.

This conveyance is made, however, upon the following conditions and restrictions, which shall run with all of said land, except that portion thereof hereinafter particularly described, shall operate as conditions subsequent, and shall apply to and bind the grantee or grantees, their heirs, personal representatives and assigns and all other persons acquiring any interest in said land, either by operation of law or in any manner whatsoever, namely:

(1) That all that part of said land lying within One Hundred and Fifty (150) feet of Wilshire Boulevard shall be used only for residence purposes,

including hotels, apartment houses, flats and duplex houses, at all times prior to January 1st, 1949.

(2) That no building which is to be used for residence purposes, shall ever be erected or permitted on any part of said land, [147] which shall cost and be reasonably worth less than Three Thousand Dollars ($3,000.00) at any time prior to January 1st, 1949.

(3) That no building which is to be used for business purposes, shall ever be erected or permitted on any part of said land, which shall cost and be reasonably worth less than Three Thousand Five Hundred Dollars ($3500.00), at any time prior to January 1st, 1949.

(4) That no part of said land shall ever be leased, rented, sold or conveyed to any person who is not of the White or Caucasian race, nor be used or occupied by any person who is not of the White or Caucasian race, but this restriction is not intended to, nor shall it prevent persons legally in possession of any part of said land from employing persons of other than said White or Caucasian race, and providing living quarters for such employees on said land.

(5) That no oil or gas well shall ever be drilled or constructed on any part of said land. The foregoing conditions and restrictions shall not apply to that portion of the land hereby conveyed which is described as follows, to-wit:

That portion of the Subdivision of the Rancho San Jose de Buenos Ayres, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 26, Pages 19 to 25 in-

clusive, Miscellaneous records of said County, described as follows:

Beginning at a point in the center line of 100th Avenue (formerly Military Avenue) 375.49 feet distant thereon Northwesterly from the Southwesterly prolongation of the Northwesterly line of Tract No. 7514, Sheets 1 and 2, recorded in Book 80, Pages 81 and 82 of Maps, in the office of the County recorder of said County, thence North 71° 33′ 20″ East 1003.87 feet; thence South 35°38′20″ East 78.73 feet; thence South 54° 21′ 40″ West along the said Northwesterly line of Tract No. 7514, 959 feet; thence North 35° 38′ 20″ West along said center line of 100th Avenue, 375.49 feet to the point of beginning. [148]

State of California,
County of Los Angeles.—ss.

I hereby certify the foregoing to be a full, true and correct copy of the instrument appearing recorded in Book No. 2867 of Official Records, Page 210, Records of Los Angeles County, and that I have carefully compared the same with the original record.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, this 10 day of June, 1932.

[Seal] C. L. LOGAN,
By M. Haines (92)
Deputy. [149]

Subject to an easement for street purposes over that portion included within the lines of Santa Monica Boulevard.

Subject also to easement and right of way given to the City of Los Angeles, by the Pacific-Southwest Trust & Savings Bank and the Holmby Corporation, recorded in Book 2410 Page 163 Official records and in Book 2462, Page 127, Official Records.

Subject also to taxes for the fiscal year 1923-1924.

Subject also to easements for street purposes over those portions included within the lines of Wilshire Boulevard and 100th Avenue.

In Witness Whereof, The said party of the first part has caused its corporate name and seal to be affixed by Secretary thereunto, duly authorized this 1st day of September, Nineteen Hundred and Twenty-three.

[Corporate Seal] HOLMBY CORPORATION.

By Malcom McNaghten,

Secretary.

State of California,
County of Los Angeles.—ss.

On this 12th day of December, A. D. 1923, before me, P. H. Cary, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared Malcolm McNaghten, known to me to be the Secretary of the Holmby Corporation, the Corporation that executed the within Instrument, known to me to be the person who executed the within instrument on behalf ofthe Corporation therein named, and acknowledged to me that such Corporation executed the same. In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this

certificate first above written.

[Notarial Seal] P. H. CARY,

Notary Public in and for said County, State of California.

#367 Copy of original recorded at request of Title Insurance & Tr. Co. Dec. 20, 1923 at 8:30 A. M. Copyist #163 Compared,

[Seal] C. L. Logan, County Recorder,
By M. G. Nelson, Deputy.

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun. 14, 1932. [150]

PETITIONER'S EXHIBIT 7.

Release of Mortgage
Corporation

Janss Investment Company to Stanley S. Anderson, et ux.

Dated September 28, 1926.

Title Insurance and Trust Company,
Title Insurance Building,
Los Angeles, California.
Order No. 1755

When recorded please return this instrument to same.

Compared. Document, Jensen. Book, Lloyd.

[Endorsed]: Recorded Sep 29 1926 9 Min. past 2 P. M. in Book 6034 at Page 264 of Official Records, Los Angeles County, Cal.

Recorded at request of Mortgagor.

C. L. Logan, County Recorder

I certify that I have correctly transcribed this document in above mentioned book.

I. Mann #133

Copyist County Recorder's Office, L. A. County, Cal. [151]

RELEASE

In Consideration of payment of the debt thereby secured, JANSS INVESTMENT COMPANY a corporation, hereby releases the mortgage dated September 1, 1923, given by Stanley S. Anderson and Marguerite S. Anderson, his wife to Holmby Corporation, a corporation, recorded in Book 3599, Page 27, of Official Records, in the office of the County Recorder of Los Angeles County, California.

In Witness Whereof, said corporation has caused this release to be executed, and its corporate name and seal to be affixed by its duly authorized officers this 28th day of September 1926.

[Seal] JANSS INVESTMENT COMPANY
By Edwin Janss, Vice-President
By Charles D. Hayes, Ass't. Secretary.

State of California,
County of Los Angeles.—ss.

On this 28 day of September 1926, before me, Florence B. Adams a Notary Public in and for said County, personally appeared Edwin Janss known to me to be the Vice President, and Chas. D. Hayes known to me to be the Assistant Secretary of Janss Investment Company the corporation that executed the foregoing instrument, known to me to be the persons who executed said instrument on behalf of the corporation therein named, and acknowledged

to me that such corporation executed the same.

Witness my hand and official seal.

[Seal] FLORENCE B. ADAMS,

Notary Public in and for said County of Los Angeles, State of California. [152]

Mortgage
Individual

Dated........................, 192............

Title Insurance and Trust Company,
Title Insurance Building,
Los Angeles, California

$62,020.00

Stanley S. Anderson, and his wife, Marguerite S. Anderson, to Holmby Corporation.

369 Order No. 706651

When recorded please mail to S. F. McFarlance, 815 Block Bldg L A

Compared. Document, Doyle. Book, Schulz.

[Endorsed]: Recorded at request of Title Insurance & Tr. Co. Dec 20 1923 at 8:30 A. M. in Book 3599 Page 27 of Official Records, Los Angeles County, Cal.

C. L. Logan, County Recorder

I certify that I have correctly transcribed this document in above mentioned book.

Julia Lee #169

Copyist County Recorder's Office. L. A. Co., Cal.

State of California,
County of Los Angeles.—ss.

On this first day of September, 1923, before me, Laura E. Hottinger, a Notary Public in and for said County, personally appeared Stanley S. Anderson, and his wife, Marguerite S. Anderson, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

WITNESS my hand and official seal.

[Seal] LAURA E. HOTTINGER,
Notary Public in and for the County of Los Angeles,
State of California. [153]

THIS MORTGAGE, Made September first, 1923, By Stanley S. Anderson and his wife, Marguerite S. Anderson, hereinafter called Mortgagor, to Holmby Corporation, a corporation, hereinafter called Mortgagee,

Witnesseth: That Mortgagor hereby mortgages to Mortgagee an undivided one-quarter (¼) interest in the real property in the City of Los Angeles, County of Los Angeles, State of California, described as that portion of the subdivision of the Rancho San Jose de Buenos Ayres, as per map recorded in book 26, pages 19 to 25, Miscellaneous Records of said County, described as follows:

Parcel No. 1—

Beginning at the intersection of the center line of 100th Avenue, (formerly Military Avenue) with the westerly prolongation of the northerly line of

the Pacific Electric Railway right of way, as shown on map of tract No. 5609 recorded in book 76, pages 68 to 71 inclusive of maps, in the office of the County Recorded of said County; thence along the center line of 100th Avenue north 35° 38′ 20″ west 2015.07 feet; thence parallel with Santa Monica Boulevard north 71° 33′ 20″ east 1003.87 feet; thence parallel with 100th Avenue south 35° 38′ 20″ east 2015.07 feet to the northerly line of said right of way; thence westerly 1003.87 feet along said northerly line of said right of way to the point of beginning.

Parcel No. 2—

That portion of said subdivision of the Rancho San Jose de Buenos Ayres, in said city, described as follows:

Beginning at the intersection of the center line of Wilshire Boulevard with a line parallel with and distant northeasterly 30 feet measured at right angles from the northeasterly line of lots 10, 11 and 12 in block 13 of said Rancho; thence northeasterly along said center line of Wilshire Boulevard to a line parallel with and distant southwesterly 30 feet measured at right angles from the southwesterly line of lot 1 in block 18 of said Rancho; thence southeasterly along said last mentioned parallel line to the northwesterly prolongation of the southeasterly line of said lot 1; thence northeasterly along said prolongation and southeasterly line of said lot 1 to the most easterly corner of said lot 1; thence parallel with 100th Avenue south 35° 38′ 20″ east to a line parallel with and northwesterly 1875.01 feet, measured at right angles from the most north-

erly line of Santa Monica Boulevard, as shown on map of said tract No. 5609; thence south 71° 33′ 20″ west along said last mentioned parallel line to the parallel line first above described; thence northwesterly along said parallel line to the point of beginning. including all buildings and improvements thereon (or that may hereafter be erected thereon); together with all and singular the tenements, hereditaments and appurtenances, water and water rights, pipes, flumes, ditches and other rights thereunto belonging or in any wise now or hereafter appertaining thereto, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. [154] For the purpose of securing

First: Payment of the indebtedness evidenced by one promissory note (and any renewal or extension thereof) in form as follows:

$62,020.00

Los Angeles, California, September first, 1923.

On or before three years, after date, for value received, we, or either of us, promise to pay to Holmby Corporation, a corporation, or order, at Los Angeles, California, the sum of Sixty Two Thousand and Twenty and no/100 Dollars, with interest thereon from date, until paid, at the rate of seven per cent. per annum, payable semi-annually. Should interest not be so paid, it shall become part of the principal and thereafter bear like interest therewith. Should default be made in payment of interest when due, the whole sum of principal and interest shall, at the option of the holder of this note, become immediately due. Principal and in-

terest payable in United States gold coin. This note is secured by a mortgage upon real property.

Stanley S. Anderson.
Marguerite S. Anderson.

U. S. I. R. S. $12.42
Cancelled.

Second: Payment of attorney's fees, in a reasonable sum to be fixed by the Court and all costs and expenses in any action brought to foreclose this mortgage or in any action or proceeding affecting the rights either of Mortgagor or Mortgagee in said real property, whether such action or proceeding progress to judgment or not; also such sums as Mortgagee may pay for examination of title to, or for surveying, the mortgaged property, all of which sums, including said attorney's fees, Mortgagor agrees to pay, and the same are hereby declared a lien upon said property and are secured hereby.

Third: Performance of every obligation, covenant, promise or agreement herein contained, direct or conditional, and repayment as herein provided of all sums advanced or expended by Mortgagee under the terms hereof.

A. 1. Mortgagor agrees to pay, when due, all taxes, assessments and incumbrances, which are or appear to be liens upon said property or any part thereof, including taxes, if any, levied under the law of said State, upon this mortgage or the debt secured hereby, and hereby waives all right to treat payment of such taxes as a payment on such debt or as being to any extent a discharge thereof; Mortgagor also agrees to keep said buildings insured against fire,

to the amount required by, and in insurance companies satisfactory to Mortgagee, and to assign the policies therefor to Mortgagee; and promptly to pay and settle (or cause to be removed by suit or otherwise) all adverse claims against said property.

2. In case said taxes, assessments, or incumbrances so agreed to be paid by Mortgagor be not so paid, or said buildings so insured and said policies so assigned, or said adverse claims so paid, settled or removed, then Mortgagee, being hereby made sole judge of the legality thereof, may, without notice to Mortgagor, pay such taxes, assessments or incumbrances, obtain such policies of insurance and pay or settle or cause to be removed by suit or otherwise all such adverse claims.

3. In the event of loss under said policies of fire insurance, the amount collected thereon shall be credited first to interest then due upon said indebtedness, next upon any any advances secured hereby and the remainder, if any, may, at the option of Mortgagee, be applied and credited upon principal, in which case interest shall thereupon cease on the amount so credited on principal; or at the option of Mortgagee, said remainder may be released to Mortgagor for the purpose of making repairs or improvements upon said property, in which case Mortgagee shall not be obliged to see to the application of the sum so released, nor shall said remainder be deemed a payment of any indebtedness secured hereby.

B. Mortgagor agrees to keep said property in good condition and repair and to permit no waste

thereof, and should said property, or any part thereof, require any inspection, repair, cultivation, irrigation, protection, care or attention of any kind or nature not provided by Mortgagor, then Mortgagee, being hereby made sole judge of the necessity therefor, may, without notice to Mortgagor, enter, or cause entry to be made upon said property, and inspect, repair, cultivate, irrigate, fertilize, fumigate, protect, care for, or maintain said property as Mortgagee may deem necessary. All sums expended by Mortgagee in doing any of the things in this mortgage authorized are secured hereby and shall be paid to Mortgagee by Mortgagor in said gold coin, on demand, with interest from date of expenditure at the rate named in the promissory note secured hereby. [155]

C. In consideration of the indebtedness evidenced by said promissory note, Mortgagor waives all right either to apply for, or to procure, registration of said property or any part thereof under the provisions of the "Land Title Law," and hereby agrees:

1. That to bring said property or any part thereof under the operation of said law would impair the security of this obligation;

2. That Mortgagor will not cause or permit any part of said property to be brought under the operation of said law;

3. That if, at any time, the owner of any part of said property shall file a petition for registration, or if any part of said property be registered under the provisions of said law, filing such petition for

registration, or such registration shall each constitute a default in performance of the covenants and agreements herein contained on the part of Mortgagor, and the whole sum of money secured by this mortgage shall, at the option of the holder of said promissory note, become immediately due and Mortgagee may proceed to foreclose this mortgage in accordance with its terms.

D. The maker thereof promises to pay said promissory note according to its terms and conditions, and in case of default in payment of principal or interest, when due, or in payment of any other money herein agreed to be paid, or in performance of any covenant or agreement herein contained on the part of Mortgagor, the whole sum of money then secured by this mortgage shall, at the option of the holder of said promissory note, become immediately due and this mortgage may thereupon, or at any time during such default, be foreclosed, and filing of a complaint in foreclosure shall be conclusive notice of the due exercise of such option.

E. In the event of foreclosure, the decree may provide that the property therein described be ordered sold en masse, or in separate parcels, at the option of plaintiff in such action.

F. It is hereby agreed, as part of the security of Mortgagee, that if default should be made in payment of the principal of said promissory note, or in payment of any interest thereon when due, or in any other payment in this mortgage provided, or in any

covenant or agreement herein provided to be performed by Mortgagor, then, and in each such case Mortgagee, without limitation or restriction by any present or future law, shall have the absolute right, upon commencement of any judicial proceeding to enforce any right under this mortgage, including foreclosure thereof, to appointment of a receiver of the property hereby mortgaged and of the revenues, rents, profits and other income thereof, and that said received shall have (in addition to such other powers as the court making such appointment may confer), full power to collect all such income and after paying all necessary expenses of such receivership and of operation, maintenance and repair of said property, to apply the balance to payment of any sums then due hereunder.

G. Mortgagor agrees that Mortgagee may at any time, without notice, and without affecting the personal liability of any person for payment of indebtedness hereby secured, or the lien of this mortgage upon the remainder of the mortgaged property for the unpaid portion of said indebtedness, release any part of said mortgaged property from the lien of this mortgage.

H. Every covenant, stipulation, promise and agreement herein shall bind and inure to the benefit of Mortgagor and Mortgagee and their respective successors in interest.

I. In this mortgage, whenever the context so requires, the masculine gender includes the feminine, the singular number includes the plural, and the

words "Promissory Note" include all promissory notes or other evidences of indebtedness secured hereby.

The mortgagee agrees, from time to time, on demand of the mortgagors, to release from the lien of this mortgage all or any part of the mortgaged property upon payment being made by the mortgagors on account of the principal sum secured by this mortgage, at the rate of $1250.00 per acre for each acre or part of an acre so released together with all accrued interest upon the sums so paid to date of payment. For example; Having in mind the fact that this mortgage covers only an undivided one-quarter interest in the lands above described; should the mortgagors desire to release a particular five acre piece, the total sum required to release such five acre piece from the lien of this mortgage on the undivided one-quarter interest in such five acre piece would be five times $1250.00 or $6250.00. All releases to be made at the expense of the mortgagors.

Witness: the hand and seal of Mortgagor.

(Seal) Stanley S. Anderson.

Marguerite S. Anderson.

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun. 14, 1932. [156]

PETITIONER'S EXHIBIT 8.

Certified Copy Order No. 491
Book 2880 Page 266 of Official Records.
GRANT DEED.
(Code) Corporation.

Original
$236.00 U.S.I.R.S. affixed and cancelled.

Holmby Corporation, a Corporation duly organized and existing under and by virtue of the laws of the State of California, and having its principal place of business in the City of Los Angeles, County of Los Angeles, and State of California, For and in Consideration of the Sum of Ten and no/100 Dollars, the receipt whereof is hereby acknowledged, does hereby Grant to Charles H. Christie, a single man, all that real property situated in the County of Los Angeles, State of California, described as follows, to-wit:

That portion of the Sub-division of the Rancho San Jose de Buenos Ayres, as per map recorded in Book 26, Pages 19 to 25, inclusive, Miscellaneous Records of said County, described as follows:—

Beginning at a point in the northwesterly line of the Pacific Electric Railway right of way, as shown on map of Tract #5609, recorded in Book 76, Pages 68 to 71 inclusive, of Maps in the office of the County Recorder of said County; distant 1003.87 feet northeasterly measured along said north-westerly line from the center line of 100th Avenue; thence parallel with the center line of 100th Avenue north 35°38′20″ west 2015.07 feet to a line parallel

with said right of way line and 1925.01 feet northwesterly, measured at right angle therefrom; thence along said last mentioned parallel line north 71° 33′20″ east to a line parallel with the center line of 100th Avenue and which passes through the most easterly corner of Lot 1, in Block 18, of said Rancho; thence along said last mentioned parallel line south 35°38′20″ east to the northwesterly line of the Pacific Electric Railway right of way; thence southwesterly along said northwesterly line to the point of beginning. [157]

This conveyance is made, however, upon the following conditions and restrictions, which shall run with said land, shall operate as conditions subsequent, and shall apply to and bind the grantee or grantees, their heirs, personal representatives and assigns, and all other persons acquiring any interest in said land, either by operation of law or in any manner whatsoever, namely:—

(1)—That no film studio sets or temporary structures of any kind or nature shall be permitted on any part of said land within one hundred and fifty (150) feet of Santa Monica Boulevard at any time prior to January 1st, 1949.

(2)—That no building which is to be used for residence purposes, shall ever be erected or permitted on any part of said land, which shall cost and be reasonably worth less than Three Thousand Dollars ($3000.00), at any time prior to January 1st, 1949.

(3)—That no building which is to be used for

business purposes, other than temporary film studio structures, shall ever be erected or permitted on any part of said land, which shall cost and be reasonably worth less than Three Thousand Five Hundred Dollars ($3500.00), at any time prior to January 1st, 1949.

(4)—That no part of said land shall ever be leased, rented, sold or conveyed to any person who is not of the White or Caucasian race, nor be used or occupied by any person who is not of the White or Caucasian race, but this restriction is not intended to, nor shall it prevent persons legally in possession of any part of said land from employing persons of other than said White or Caucasian race, and providing living quarters for such employees on said land. [158]

(5)—That no oil or gas well shall ever be drilled or constructed on any part of said land.

Subject to an easement for street purposes over that portion included within the lines of Santa Monica Boulevard.

Subject Also to easement and right of way given to the City of Los Angeles, by the Pacific-Southwest Trust & Savings Bank and the Holmby Corporation, recorded in Book 2410, Page 163, Official Records, and in Book 2462, Page 127, Official Records.

Subject also to taxes for the fiscal year 1923-24.

In Witness Whereof, The said party of the first part has caused its corporate name and seal to be affixed by its Secretary thereunto, duly authorized

this 1st day of September, nineteen hundred and twenty-three.

[Corporate Seal] HOLMBY CORPORATION.
By Malcolm McNaghten, Secretary.

State of California,
County of Los Angeles—ss.

On this 12th day of December, A.D. 1923, before me P. H. Cary, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared Malcolm McNaghten known to me to be the Secretary of the Holmby Corporation, the Corporation that executed the within Instrument, known to me to be the person who executed the within Instrument, on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] P. H. CARY,
Notary Public in and for said County, State of California.

#388 Copy of original recorded at request of Title Insurance & Tr. Co., Dec. 20, 1923 at 8:30 A. M. Copyist #113 — Compared, — [Seal] C. L. Logan, County Recorder—By C. C. Lloyd, Deputy. [159]

State of California,
County of Los Angeles—ss.

I hereby certify the foregoing to be a full, true and correct copy of the instrument appearing recorded in Book No. 2880 of Official Records Page 266, Records of Los Angeles County, and that I have carefully compared the same with the original record.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, this 10 day of June, 1932.

[Seal] C. L. LOGAN, County Recorder.
By M. Haines (92) Deputy.

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun 14, 1932. [*160*]

PETITIONER'S EXHIBIT 9.

Certified Copy Order No. 495

Book 3386 Page 83 of Official Records.

THIS MORTGAGE, Made September 1st, 1923, By Charles H. Christie, a single man, hereinafter called Mortgagor, To Holmby Corporation, a corporation, hereinafter called Mortgagee, Witnesseth: That Mortgagor hereby mortgages to Mortgagee the real property in the City of Los Angeles, County of Los Angeles, State of California, described as that portion of the subdivision of the Rancho San Jose de Buenos Ayres, as per map recorded in book 26, pages 19 to 25 inclusive, Miscellaneous Records of said County, described as follows:

Beginning at a point in the Northwesterly line of the Pacific Electric Railway right of way, as shown on map of Tract #5609, recorded in Book 76, pages 68 to 71 inclusive of maps, in the office of the County Recorder of said County; distant 1003.87 feet Northeasterly measured along said Northwesterly line from the center line of 100th Avenue; thence parallel with the center line of 100th Avenue North 35°38′20″ West 2015.07 feet to a line parallel with said right of way line and 1925.01 feet Northwesterly measured at right angles therefrom; thence along said last mentioned parallel line North 71°33′20″ East to a line parallel with the center line of 100th Avenue and which passes through the most Easterly corner of Lot 1 in Block 18 of said Rancho; thence along said last mentioned parallel line South 35°38′20″ East to the Northwesterly line of the Pacific Electric Railway right of way; thence Southwesterly along said Northwesterly line to the point of beginning. (Subject to an easement for street purposes over that portion included within the lines of Santa Monica Boulevard.) Including all buildings and improvements thereon (or that may hereafter be erected thereon); together with all and singular the [161] tenements, hereditaments and appurtenances, water and water rights, pipes, flumes, ditches and other rights thereunto belonging or in any wise now or hereafter appertaining thereto, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. For the purpose of securing First: Pay-

ment of the indebtedness evidenced by One Promissory note (and any renewal or extension thereof) in form as follows:

$207,250.00 Los Angeles, California,
September 1st, 1923.

On or before Three Years after date, for value received, I promise to pay to Holmby Corporation, a corporation, or order, at Los Angeles, California, the sum of Two hundred Seven Thousand two Hundred Fifty and no/100 dollars, with interest thereon from date until paid, at the rate of Seven per cent. per annum, payable Semi-annually. Should interest not be so paid, it shall become part of the principal and thereafter bear like interest therewith. Should default be made in payment of interest when due, the whole sum of principal and interest shall, at the option of the holder of this note, become immediately due. Principal and interest payable in United States gold coin. This note is secured by a mortgage upon real property.

Charles H. Christie

U.S.I.R.S. $41.46 Cancelled.

Second: Payment of attorney's fees, in a reasonable sum to be fixed by the Court and all costs and expenses in any action brought to foreclose this mortgage or in any action or proceeding affecting the rights either of Mortgagor or Mortgagee in said real property, whether such action or proceeding progress to judgment or not; also such sums as Mortgagee may pay for examination of title to, or for surveying, the mortgaged property, all of which sums, including said attorney's fees,

Mortgagor [162] agrees to pay, and the same are hereby declared a lien upon said property and are secured hereby.

Third: Performance of every obligation, covenant, promise or agreement herein contained, direct or conditional, and repayment as herein provided of all sums advanced or expended by Mortgagee under the terms hereof.

A. 1. Mortgagor agrees to pay, when due, all taxes, assessments and incumbrances, which are or appear to be liens upon said property or any part thereof, including taxes, if any levied under the law of said State, upon this mortgage or the debt secured hereby, and hereby waives all right to treat payment of such taxes as a payment on such debt or as being to any extent a discharge thereof; Mortgagor also agrees to keep said buildings insured against fire, to the amount required by, and in insurance companies satisfactory to Mortgagee, and to assign the policies therefor to Mortgagee; and promptly to pay and settle (or cause to be removed by suit or otherwise) all adverse claims against said property.

2. In case said taxes, assessments or incumbrances so agreed to be paid by Mortgagor be not so paid, or said buildings so insured and said policies so assigned, or said adverse claims so paid, settled or removed, then Mortgagee, being hereby made sole judge of the legality thereof, may, without notice to Mortgagor, pay such taxes, assessments or incumbrances, obtain such policies of insurance

and pay or settle or cause to be removed by suit or otherwise all such adverse claims.

3. In the event of loss under said policies of fire insurance, the amount collected thereon shall be credited first to interest then due upon said indebtedness, next upon any advances secured hereby and the remainder, if any, may, at the option of Mortgagee, be applied and credited upon principal, in which case interest shall thereupon cease on the amount so credited on principal; or at the option of Mortgagee, said remainder may be released to [163] Mortgagor for the purpose of making repairs or improvements upon said property, in which case Mortgagee shall not be obliged to see to the application of the sum so released, nor shall said remainder be deemed a payment of any indebtedness secured hereby.

B. Mortgagor agrees to keep said property in good condition and repair and to permit no waste thereof, and should said property, or any part thereof, require any inspection, repair, cultivation, irrigation, protection, care or attention of any kind or nature not provided by Mortgagor, then Mortgagee, being hereby made sole judge of the necessity therefor, may, without notice to Mortgagor, enter, or cause entry to be made upon said property, and inspect, repair, cultivate, irrigate, fertilize, fumigate, protect, care for, or maintain said property as Mortgagee may deem necessary. All sums expended by Mortgagee in doing any of the things in this mortgage authorized are secured hereby and

shall be paid to Mortgagee by Mortgagor in said gold coin, on demand, with interest from date of expenditure at the rate named in the promissory note secured hereby.

C. In consideration of the indebtedness evidenced by said promissory note, Mortgagor waives all right either to apply for, or to procure, registration of said property or any part thereof under the provisions of the "Land Title Law," and hereby agrees:

1. That to bring said property or any part thereof under the operation of said law would impair the security of this obligation;

2. That Mortgagor will not cause or permit any part of said property to be brought under the operation of said law;

3. That if at any time, the owner of any part of said property shall file a petition for registration, or if any part [164] of said property be registered under the provisions of said law, filing such petition for registration, or such registration shall each constitute a default in performance of the covenants and agreements herein contained on the part of Mortgagor, and the whole sum of money secured by this mortgage shall, at the option of the holder of said promissory note, become immediately due and Mortgagee may proceed to foreclose this mortgage in accordance with its terms.

D. The maker thereof promises to pay said promissory note according to its terms and conditions, and in case of default in payment of prin-

cipal or interest, when due, or in payment of any other money herein agreed to be paid, or in performance of any covenant or agreement herein contained on the part of Mortgagor, the whole sum of money then secured by this mortgage shall, at the option of the holder of said promissory note, become immediately due and this mortgage may thereupon, or at any time during such default, be foreclosed, and filing of a complaint in foreclosure shall be conclusive notice of the due exercise of such option.

E. In the event of foreclosure, the decree may provide that the property therein described be ordered sold en masse, or in separate parcels, at the option of plaintiff in such action.

F. It is hereby agreed, as part of the security of Mortgagee, that if default should be made in payment of the principal of said promissory note, or in payment of any interest thereon when due, or in any other payment in this mortgage provided, or in any covenant or agreement herein provided to be performed by Mortgagor, then, and in each such case Mortgagee, without limitation or restriction by [165] any present or future law, shall have the absolute right, upon commencement of any judicial proceeding to enforce any right under this mortgage, including foreclosure thereof, to appointment of a receiver of the property hereby mortgaged and of the revenues, rents, profits and other income thereof, and that said receiver shall have (in addition to such other powers as the court

making such appointment may confer), full power to collect all such income and after paying all necessary expenses of such receivership and of operation, maintenance and repair of said property, to apply the balance to payment of any sums then due hereunder.

G. Mortgagor agrees that Mortgagee may at any time, without notice, and without affecting the personal liability of any person for payment of indebtedness hereby secured, or the lien of this mortgage upon the remainder of the mortgaged property for the unpaid portion of said indebtedness, release any part of said mortgaged property from the lien of this mortgage.

H. Every covenant, stipulation, promise and agreement herein shall bind and inure to the benefit of Mortgagor and Mortgagee and their respective successors in interest.

I. In this mortgage, whenever the context so requires, the masculine gender includes the feminine, the singular number includes the plural, and the words "Promissory Note" include all promissory notes or other evidences of indebtedness secured hereby.

The Mortgagee agrees, from time to time, on demand of the Mortgagors, to release from the lien of this Mortgage all or any part of the Mortgaged property upon payment being made by the Mortgagors on account of the principal sum secured by this Mortgage, at the rate of $5000.00 per acre for each acre or part of an acre so released together

with all accrued interest upon the sums [166] so paid to date of payment.

Witness: the hand and seal of Mortgagor.

CHARLES H. CHRISTIE

State of California,
County of Los Angeles—ss.

On this 27th day of October, 1923, before me, Claude Hill, a Notary Public in and for said County, personally appeared Charles H. Christie, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

Witnes my hand and official seal.

[Notarial Seal] CLAUDE HILL,

Notary Public in and for the County of Los Angeles, State of California.

My Com. Expires May 22nd, 1924.

#389. Copy of original recorded at request of Title Insurance & Tr. Co. Dec 20 1923 at 8:30 A.M. Copyist #168. Compared. C. L. Logan, County Recorder, By I. Taber, Deputy. [167]

State of California,
County of Los Angeles—ss.

I hereby certify the foregoing to be a full, true and correct copy without Release and Assignment Stamps of the instrument appearing recorded in Book No. 3386 of Official Records Page 83, Records of Los Angeles County, and that I have carefully compared the same with the original record.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, this 10 day of June, 1932.

[Seal] C. L. LOGAN, County Recorder.
By F. B. Embree (34) Deputy.

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun 14, 1932. [168]

PETITIONER'S EXHIBIT 10.

Certified Copy Order No. 473
Book 5146—Page 368 of Official Records

GRANT DEED

CHARLES H. CHRISTIE, a single man, in consideration of Ten Dollars, to him in hand paid, receipt of which is hereby acknowledged, does hereby Grant to STANLEY S. ANDERSON, a married man, an undivided Two-twelfths interest in the real property in the City of Los Angeles, County of Los Angeles, State of California, described as:

A parcel of land, including portions of Blocks 13 and 14 of the Subdivision of the Rancho San Jose de Buenos Ayres, as per map recorded in Book 26, Pages 19 to 25 inclusive, Miscellaneous Records of said County; Portions of Blocks 6, 8 and 9, as per map of Tract No. 7803, recorded in Book 85, Pages 59 and 60 of Maps, Records of said County, and all of Blocks 10 to 16 inclusive, as per map of said Tract No. 7803, lying within the following described boundary;

Beginning at the intersection of the South Easterly prolongation of the North Easterly line of Tract No. 7514, as per map recorded in Book 80, Pages 81 and 82 of Maps, Records of said County; with the North Westerly line of the Pacific Electric Railway right-of-way, as shown on map of said Tract No. 7514; thence North 35°38′20″ West 2015.07 feet along the said North Easterly line of Tract No. 7514 and its North Westerly prolongation to the North Westerly line of that certain parcel of land conveyed to Charles H. Christie by the Holmby Corporation, deed recorded in Book 2880, Pages 266 and 267 Official Records of said County; thence North 71°33′20″ East 2363.40 feet along said North Westerly line to the North Easterly line of said Tract No. 7803; thence South 35°38′20″ East 1955.86 feet along said North Easterly line and its South Easterly prolongation to the said North Westerly line of the Pacific Electric Railway right-of-way; thence South Westerly along the said North Westerly line of the Pacific Electric Railway right-of-way to the South Easterly prolongation of the center line of Westwood Boulevard, as shown on [169] said map of Tract No. 7803; thence North 35°38′20″ West along said center line of Westwood Boulevard, 1514.28 feet; thence South 54°21′40″ West 160 feet; thence North 35°38′20″ West 430 feet; thence South 54°21′40″ West 165 feet; thence South 52°6′36″ West 636.09 feet; thence South 35° 38′ 20″ East 1622.04 feet to the said North Westerly line of the Pacific Electric Railway right-of-way; thence South 71°33′20″ West 350.04 feet to the point of beginning,

containing 66.429 Acres, more or less.

SUBJECT to easements for street purposes over all streets as shown on said map of said Tract No. 7803, and portion of Santa Monica Boulevard included within the lines of the above described property.

This Deed is given for the express purpose of transferring from the grantor and vesting in the grantee an undivided 2/12ths interest in and to the above described property, including any and all reversionary rights.

SUBJECT to a Mortgage of Two Hundred Seven Thousand Two Hundred Fifty & No/100 Dollars ($207,250.00) placed on this property as well as other properties by Charles H. Christie. Stanley S. Anderson and Marguerite S. Anderson, husband and wife, assume and agree to pay Forty Thousand Six Hundred Forty-two and 25/100 Dollars ($40,642.25) of said indebtedness before said mortgage shall become due.

TO HAVE AND TO HOLD to said Grantees their heirs or assigns forever.

WITNESS my hand this 21st day of January, 1925.

CHARLES H. CHRISTIE
By William S. Holman,
Attorney-in-Fact. [170]

State of California,
County of Los Angeles.—ss.

On this 21st day of January, A. D. 1925, before me, Claude Hill, a Notary Public in and for the

said County and State, residing therein, duly commissioned and sworn, personally appeared Wm. S. Holman, known to me to be the person whose name is subscribed to the within Instrument, as the Attorney-in-Fact of Charles H. Christie and acknowledged to me that he subscribed the name of Charles H. Christie thereto as principal and his own name as Attorney-in-Fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] CLAUDE HILL,
Notary Public in and for said County and State.
My Com. Exp. April 21, 1928.

#1461 Copy of original recorded at request of Grantee Nov. 30, 1925, at 43 min past 2 P. M. Copyist #118, Compared, C. L. Logan, County Recorder, By D. Crowell, Deputy. [172]

State of California,
County of Los Angeles.—ss.

I hereby certify the foregoing to be a full, true and correct copy of the instrument appearing recorded in Book No. 5146 of Official Records, Page 368, Records of Los Angeles County, and that I have carefully compared the same with the original record.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, this 10th day of June, 1932.

[Seal] C. L. LOGAN, County Recorder
By L. C. Brown (8) Deputy [171]

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun. 14, 1932.

PETITIONER'S EXHIBIT 11

Recorder's Certified Copy Order No. 472

Book 5159 Page 384 of Official Records

GRANT DEED

O.K., H.M.N., Dep. C.H. C.H.

Charles H. Christie, a single man, in consideration of Ten Dollars to him in hand paid, receipt of which is hereby acknowledged, does hereby Grant to *Stanely* S. Anderson, a married man, an undivided one-fourth interest in the real property in the City of Los Angeles, County of Los Angeles, State of California, described as:

A parcel of land, including portions of Blocks 13 and 14 of the Subdivision of the Rancho San Jose de Buenos Ayres, as per map recorded in Book 26, pages 19 to 25 inclusive, Miscellaneous Records of said County, lying within the following described boundary:

Beginning at a point in the North Westerly line of the Pacific Electric Railway right-of-way, as shown on map of Tract No. 7514, recorded in Book 80 pages 81 and 82 of Maps, Records of said County, distant thereon North 71°33′20″ East, 350.04 feet from the South Easterly prolongation of the North Easterly line of said Tract No. 7514; thence North 35°38′20″ West, 1622.04 feet; thence North 52°6′36″ East, 636.09 feet; thence North 54° 21′40″ East, 165 feet; thence South 35°38′20″ East, 430 feet; thence North 54°21′40″ East, 160 feet to the center line of Westwood Boulevard, as shown on map of Tract No. 7803 recorded in Book 85 pages

59 and 60 of Maps, Records of said County; thence South 35°38′20″ East, 1514.28 feet along said center line of Westwood Boulevard and its South Easterly prolongation to the said North Westerly line of the Pacific Electric Railway right-of-way; thence South 71°33′20″ West, 1005.55 feet along said North Westerly line to the point of beginning, containing 37.837 acres, more or less.

Subject to: easements for street purposes over portions of Westwood Boulevard and Santa Monica Boulevard included within the lines of the above described property.

This deed is given for the express purpose of transferring from the grantor and vesting in the grantees an undivided one-fourth interest in and to the above described property, includ- [173] ing any and all reversionary rights.

Subject to: a mortgage of Two Hundred Seven Thousand Two Hundred Fifty & no/100 Dollars ($207,250.00) placed on this property as well as other properties by Charles H. Christie. Stanley S. Anderson and Marguerite S. Anderson, husband and wife, assume and agree to pay Forty Thousand Six Hundred Forty-two and 25/100 Dollars ($40,-642.25) of said indebtedness before said mortgage shall become due.

To Have and to Hold to said Grantees their heirs or assigns forever.

Witness my hand this 21st day of January, 1925.

CHARLES H. CHRISTIE
By William S. Holman,
Attorney-in-fact.

State of California,
County of Los Angeles—ss.

On this 21st day of January, A. D. 1925, before me, Claude Hill, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared Wm. S. Holman, known to me to be the person whose name is subscribed to the within instrument, as the Attorney-in-fact of Charles H. Christie and acknowledged to me that he subscribed the name of Charles H. Christie thereto as principal and his own name as Attorney-in-fact.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] CLAUDE HILL,
Notary Public in and for said County and State.

My com. exp. April 21, 1928.

#1462—Copy of original recorded at request of Grantee Nov. 30, 1925 at 43 min. past 2 P. M. Copyist #127. Compared. C. L. Logan, County Recorder. By H. M. Newman, Deputy. [175]

State of California,
County of Los Angeles—ss.

I hereby certify the foregoing to be a full, true and correct copy of the instrument appearing recorded in Book No. 5159 of Official Records, Page 384, Records of Los Angeles County, and that I have carefully compared the same with the original record.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, this 10th day of June, 1932.

[Seal] C. L. LOGAN, County Recorder
By C. H. Benton (12) Deputy. [174]

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun 14, 1932.

PETITIONER'S EXHIBIT 12.

Certified Copy Order No. 498

Book No. 5672 Page 257 Official Records

GRANT DEED

Stanley S. Anderson and Marguerite S. Anderson, husband and wife, in consideration of Ten Dollars, to them in hand paid, receipt of which is hereby acknowledged, do hereby GRANT to Janss Investment Company, a corporation, an undivided one-fourth interest in and to the real property in the City of Los Angeles, County of Los Angeles, State of California, described as: Lots One (1) to Three (3) inclusive, Five (5) and Seven (7), Eleven (11), to Thirteen (13) inclusive, Fifteen (15) to Eighteen (18) inclusive, Twenty (20) to Twenty-four (24) inclusive, in Block One (1), One (1) to Four (4) inclusive, Six (6) to Ten (10) inclusive, Twelve (12) to Seventeen (17) inclusive, Nineteen (19) and Twenty (20) in Block Two (2), Lots Three (3) to Fifteen (15) inclusive, in Block Three (3), Lots Two (2) and Four (4), Five (5) to Nine (9) inclusive, Eleven (11) to Fourteen (14)

inclusive, in Block Four (4), Lots One (1) and Two (2), Four (4) to Seven (7) inclusive, Nine (9), Eleven (11) to Thirteen (13) inclusive, in Block Five (5), Lots One (1) and Two (2), Four (4) to Eight (8) inclusive, Ten (10) to Seventeen (17) inclusive, in Block Six (6), Lots One (1) to Ten (10) inclusive, Twelve (12) to Fourteen (14) inclusive, in Block Seven (7), Lots One (1), Fifteen (15) and Sixteen (16), in Block Eight (8) of Tract No. 7803, as per Map recorded in Book 85, at Pages 59 and 60, of Maps, in the office of the County Recorder of said County, Lots Seven (7), Eight (8) and Nine (9), in Block Twenty-nine (29), Lots Five (5) to Thirteen (13), in Block Thirty (30) of Tract No. 7803, as per Map recorded in Book 88, at Pages 73, 74 and 75, of Maps, in the office of the County Recorder of said County.

Lot Six (6), Block Thirty-one (31) of Tract 7803, as per Map recorded in Book 85, at Pages 59 and 60, of Maps, in the office of the County Recorder of said County.

TO HAVE AND TO HOLD to said Grantee its successors or as- [176] signs.

WITNESS our hands this 6th day of May, 1926.

STANLEY S. ANDERSON
MARGUERITE S. ANDERSON

State of California,
County of Los Angeles—ss.

On this 6th day of May, 1926, before me, Olivia M. McBride, a Notary Public in and for said

County, personally appeared Stanley S. Anderson and Marguerite S. Anderson, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same.

WITNESS my hand and official seal.

[Notarial Seal] OLIVIA M. McBRIDE,
Notary Public in and for the County of Los Angeles, State of California.

#1374 Copy of original recorded at request of Grantee, Jun. 1, 1926 at 17 min past 2 P.M. Copyist #118. Compared. C. L. Logan, County Recorder, by F. E. Zimmerman, Deputy. [178]

State of California,
County of Los Angeles—ss.

I hereby certify the foregoing to be a full, true and correct copy of the instrument appearing recorded in Book No. 5672 of Official Records, Page 257, Records of Los Angeles County, and that I have carefully compared the same with the original record.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, this 10th day of June, 1932.

[Seal] C. L. LOGAN, County Recorder.
By M. Dean (64) Deputy. [177]

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun 14, 1932.

PETITIONER'S EXHIBIT 13.

Certified Copy Order No. 494
Book 6234 Page 16 of Official Records.

GRANT DEED.

Stanley S. Anderson and Marguerite S. Anderson, husband and wife, in consideration of Ten Dollars, to them in hand paid, receipt of which is hereby acknowledged, do hereby Grant to Janss Investment Company, a corporation, an undivided one-fourth interest in and to the real property in the City of Los Angeles, County of Los Angeles, State of California, described as

Lots Two (2) to Twelve (12) inclusive, Fourteen (14) to Sixteen (16) inclusive, Eighteen (18) to Twenty-four (24) inclusive, in Block One (1), Lots One (1) to Eight (8) inclusive, Ten (10) and Fifteen (15) Seventeen (17) to Twenty-three (23) inclusive, Twenty-six (26) and Twenty-seven (27), in Block Two (2), Lots One (1) to Sixteen (16) inclusive, Nineteen (19), Twenty-one (21) to Twenty-three (23) inclusive, Twenty-six (26) to Thirty-one (31) inclusive, in Block Three (3), Lots One (1) to Four (4) inclusive, Seven (7), Nine (9) to Twelve (12) inclusive, Fourteen (14) to Twenty (20) inclusive, in Block Four (4), Lots Two (2) and Three (3), Six (6) to Eight (8) inclusive, Eleven (11) to Fifteen (15) inclusive, Seventeen (17) to Twenty (20) inclusive, in Block Five (5), Lots One (1) and Two (2), Four (4) to Nine (9) inclusive, Twelve (12), Fifteen (15) to Twenty-one (21) inclusive, in Block Six (6), Lots One (1) to Five (5) inclusive, Seven (7) and Eight

(8), Ten (10) to Seventeen (17) inclusive, in Block Seven (7), Lots One (1) to Six (6) inclusive, Nine (9) to Fifteen (15) inclusive, in Block Eight (8), Lots One (1) to Five (5) inclusive, Seven (7) to Fifteen (15) inclusive, in Block Nine (9), of Tract 7514, as per Map recorded in [179] Book 80, at Pages 81 and 82, of Maps, in the office of the County Recorder of said County. Lots One (1), Three (3) to Eight (8) inclusive, Ten (10) to Twelve (12) inclusive, Sixteen (16) to Nineteen (19) inclusive, in Block One (1), Lots Three (3) to Nineteen (19) inclusive, in Block Two (2), Lots One (1) to Fourteen (14) inclusive, Sixteen (16) to Eighteen (18) inclusive, in Block Three (3), Lots One (1) to Four (4) inclusive, Six (6) to Fifteen (15) inclusive, in Block Four (4), Lots One (1) to Eighteen (18) inclusive in Block Five (5), Lots One (1) to Four (4) inclusive, Six (6) to Sixteen (16) inclusive, in Block Six (6), One (1) to Seventeen (17) inclusive, in Block Seven (7), Lots One (1) to Fourteen (14) inclusive, in Block Eight (8), Lots One (1) to Thirteen (13) inclusive, in Block Nine (9), Lots One (1) to Fourteen (14) inclusive, in Block Ten (10), Lots One (1) to Four (4) inclusive, Eleven (11) to Sixteen (16) inclusive, in Block Eleven (11)), Lots One (1) to Three (3) inclusive, Fifteen (15) to Eighteen (18) inclusive, in Block Twelve (12) of Tract No. 8235, as per Map recorded in Book 114, at Pages 91 to 93 inclusive, of Maps in the office of the County Recorder of said County.

To have and to Hold to said Grantee, its successors or assigns.

Witness our hands this 6th day of May, 1926.

STANLEY S. ANDERSON
MARGUERITE S. ANDERSON

State of California,
County of Los Angeles—ss.

On this 6th day of May, 1926, before me, Oliva M. McBride, a Notary Public in and for said County, personally appeared Stanley S. Anderson and Marguerite S. Anderson, known to me to be the persons whose names are subscribed to [180] the foregoing instrument, and acknowledged to me that they executed the same.

Witness my hand and official seal.

[Notarial Seal] OLIVIA M. McBRIDE,
Notary Public in and for the County of Los Angeles, State of California.

#1376. Copy of original, recorded at request of Grantee, June 1, 1926, at 17 Min. Past 2 P.M. Copyist #73. Compared. C. L. Logan, County Recorder, by I. Cady, Deputy. [182]

State of California,
County of Los Angeles—ss.

I hereby certify the foregoing to be a full, true and correct copy of the instrument appearing recorded in Book No. 6234 of Official Records, Page 16, Records of Los Angeles County, and that I have

carefully compared the same with the original record.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, this 10th day of June, 1932.

[Seal] C. L. LOGAN, County Recorder.
By M. E. Mussen (61) Deputy. [181]

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun 14, 1932.

PETITIONER'S EXHIBIT 14.

Certified Copy Order No. 497
Book No. 5672 Page 256 Official Records

GRANT DEED

Stanley S. Anderson and Marguerite S. Anderson, husband and wife, in consideration of Ten Dollars, to them in hand paid, receipt of which is hereby acknowledged, do hereby Grant to Janss Investment Company, a corporation, an undivided one-sixth interest in and to the real property in the City of Los Angeles, County of Los Angeles, State of California, described as: Lots Five (5) to Ten (10) inclusive, in Block Eleven (11), Lots Four (4) to Fourteen (14) inclusive, in Block Twelve (12), Lots One (1) to Four (4) inclusive, Six (6) to Thirteen (13) inclusive, in Block Thirteen (13), Lots One (1) to Sixteen (16) inclusive, in Block Fourteen (14), Lots One (1) to Twelve (12) inclusive, Fourteen (14) to Nineteen (19) inclusive,

Twenty-three (23) to Thirty (30) inclusive, in Block Fifteen (15) of Tract No. 8235, as per map recorded in Book 114, at Pages 91 to 93 inclusive, of Maps, in the office of the County Recorder of said County.

Lots Four (4) to Twelve (12) inclusive, in Block Eight (8), Lots Three (3 to Eleven (11) inclusive, Thirteen (13) to Nineteen (19) inclusive, in Block Nine (9), Lots One (1) to Six (6) inclusive, Eight (8) and Nine (9), Eleven (11) to Twenty-two (22) inclusive, in Block Ten (10), Lots Three (3) to Thirteen (13) inclusive, in Block Eleven (11), Lots One (1) to Nine (9) inclusive, Twelve (12) to Fifteen (15) inclusive, Eighteen (18) to Twenty-three (23) inclusive, in Block Twelve (12) Lots One (1) to Six (6) inclusive, Eight (8) to Fifteen (15) inclusive, Seventeen (17) to Twenty-four (24) inclusive, Twenty-six (26) to Thirty-one (31) inclusive, in Block Thirteen (13), Lots One (1) to Twenty (20) inclusive, Twenty-two (22) to Twenty-six (26) inclusive, Twenty-eight (28) to Thirty-one (31) inclusive, in Block Fourteen (14), Lots One (1) to Twenty-nine (29) inclusive, in Block Fifteen (15), Lots One (1) to Five (5) inclusive, Seven (7) to Thirteen (13), inclusive, Fifteen (15) to Twenty-one (21) inclu- [183] sive, Twenty-three (23) to Twenty-nine (29) inclusive, Thirty-one (31), Thirty-two (32) and Thirty-four (34), in Block Sixteen (16) of Tract No. 7803, as per Map recorded in Book 85, at Pages 59 and 60, of Maps, in the office of the County Recorder of said County. TO HAVE

AND TO HOLD to said Grantee its successors or assigns.

WITNESS our hands this 6th day of May, 1926.

STANLEY S. ANDERSON
MARGUERITE S. ANDERSON

State of California,
County of Los Angeles.—ss.

On this 6th day of May, 1926, before me, Olivia M. McBride, a Notary Public in and for said County, personally appeared Stanley S. Anderson and Marguerite S. Anderson, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same.

WITNESS my hand and official seal.

[Notarial Seal] OLIVIA M. McBRIDE
Notary Public in and for the County of Los Angeles, State of California.

#1373 Copy of original recorded at request of Grantee, Jun 1, 1926 at 17 min past 2 P. M. Copyist #118 Compared C. L. Logan, County Recorder, by F. E. Zimmerman Deputy. [185]

State of California,
County of Los Angeles.—ss.

I hereby certify the foregoing to be a full, true and correct copy of the instrument appearing recorded in Book 5672 of Official Records, Page 256, Records of Los Angeles County, and that I have carefully compared the same with the original record.

In Witness Whereof, I have hereunto set my hand

and affixed my Official Seal, this 10th day of June, 1932.

[Seal] C. L. LOGAN, County Recorder
By M. Dean (64) Deputy [184]

[Endorsed]: United States Board of Tax Appeals. Admitted in Evidence Jun. 14, 1932.

PETITIONER'S EXHIBIT 15.

Certified Copy Order No. 496
Book No. 5672 Page 255 Official Records

GRANT DEED

Stanley S. Anderson and Marguerite S. Anderson, husband and wife, in consideration of Ten and No/100 Dollars, to them in hand paid, receipt of which is hereby acknowledged do hereby Grant to Janss Investment Company, a Corporation, an undivided one-fourth (¼) interest in the real property in the City of Los Angeles, County of Los Angeles, State of California, described as: A parcel of land, including portions of Blocks 13 and 14 of the Subdivision of the Rancho San Jose de Buenos Ayres, as per map recorded in Book 26, pages 19 to 25 inclusive, Miscellaneous Records of said County, lying within the following described boundary: Beginning at a point in the Northwesterly line of the Pacific Electric Railway right-of-way as shown on map of Tract No. 7514 recorded in Book 80, Pages 81 and 82 of Maps, records of said County, distant thereon North 71° 33′ 20″ East 350.04 feet from the Southeasterly prolongation of the Northeasterly line of said Tract No. 7514; thence North 35° 38′ 20″

West 1622.04 feet; thence North 52° 6′ 36″ East 636.09 feet; thence North 54° 21′ 40″ East 165 feet; thence South 35° 38′ 20″ East 430 feet; thence North 54° 21′ 40″ East 160 feet to the center line of Westwood Boulevard, as shown on map of Tract No. 7803, recorded in Book 85, Pages 59 and 60 of Maps, records of said County; thence South 35° 38′ 20″ East 1514.28 feet along said center line of Westwood Boulevard and its Southeasterly prolongation to the said Northwesterly line of the Pacific Electric Railway right-of-way; thence South 71° 33′ 20″ West 1005.55 feet along said Northwesterly line to the point of beginning, containing 37.837 acres, more or less. SUBJECT to easements for street purposes over portions of Westwood Boulevard and Santa Monica Boulevard included within the lines of the above described property. This deed is given for the express purpose of transferring from the grantors and vesting in the grantee an undivided one-fourth (¼) interest in and [186] to the above described property, including any and all reversionary rights.

TO HAVE AND TO HOLD to said grantee and to its successors or assigns forever.

WITNESS our hands this 31st day of August, 1925.

STANLEY S. ANDERSON
MARGUERITE S. ANDERSON

State of California,
County of Los Angeles.—ss.

On this 31st day of August, 1925, before me, Olivia M. McBride, a Notary Public in and for said

County, personally appeared Stanley S. Anderson and Marguerite S. Anderson, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same.

WITNESS my hand and official seal.

[Notarial Seal] OLIVIA M. McBRIDE
Notary Public in and for the County of Los Angeles, State of California.

#1377 Copy of original recorded at request of Grantee Jun. 1, 1926, at 17 min past 2 P. M. Copyist #118 Compared C. L. Logan, County Recorder, by F. E. Zimmerman Deputy. [188]

State of California,
County of Los Angeles.—ss.

I hereby certify the foregoing to be a full, true and correct copy of the instrument appearing recorded in Book No. 5672 of Official Records, Page 255, Records of Los Angeles County, and that I have carefully compared the same with the original record.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, this 10th day of June, 1932.

[Seal] C. L. LOGAN, County Recorder
By M. Dean (64) Deputy [187]

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun. 14, 1932.

PETITIONER'S EXHIBIT 16.
CORPORATION GRANT DEED

JANSS INVESTMENT COMPANY, a corporation organized under the laws of the State of California, with its principal place of business at Los Angeles, California, in consideration of Ten Dollars ($10.00) to it in hand paid, receipt of which is hereby acknowledged, does hereby grant to STANLEY S. ANDERSON and MARGUERITE S. ANDERSON, husband and wife, an undivided one-fourth (¼) interest in the real property in the City of Los Angeles, County of Los Angeles, State of California, described as a parcel of land, including portions of Blocks 13 and 14 of the subdivision of the Rancho San Jose de Buenos Ayres, as per map recorded in Book 26, Pages 19 to 25 inclusive, Miscellaneous Records of said County, lying within the following described boundary:

Beginning at a point in the Northwesterly line of the Pacific Electric Railway right-of-way, as shown on map of Tract No. 7514 recorded in Book 80, Pages 81 and 82 of Maps, records of said County, distant thereon North 71° 33′ 20″ East 350.04 feet from the Southeasterly prolongation of the Northeasterly line of said Tract No. 7514; thence North 35° 38′ 20″ West 1622.04 feet; thence North 52° 6′ 36″ East 636.09 feet; thence North 54° 21′ 40″ East 165 feet; thence South 35° 38′ 20″ East 430 feet; thence North 54° 21′ 40″ East 160 feet to the center line of Westwood Boulevard, as shown on map of Tract No. 7803, recorded in Book 85, pages 59 and 60 of Maps, records of said County; thence South 35° 38′

20″ East 1514.28 feet along said center line of Westwood Boulevard and its Southeasterly prolongation to the said Northwesterly line of the Pacific Electric Railway right-of-way; thence South 71° 33′ 20″ West 1005.55 feet along said Northwesterly line to the point of beginning, containing 37.837 acres, more or less.

EXCEPTING THEREFROM that portion described as follows:

All that portion of Block 14, Rancho San Jose de Buenos Ayres, as per map recorded in Book 52, Pages 9, 10, 11 and 12, Miscellaneous Records of Los Angeles County, being a strip or parcel of land lying between the Southwesterly line of Westwood Boulevard (80 feet in width) as shown on map of Tract No. 7803, recorded in Book 85, pages 59 and 60 of Maps, Records of said County, and a [189] line parallel with and distant Twenty (20) feet Southwesterly, measured at right angles, to said Southwesterly line, and extending from the Southeasterly line of that portion of Ohio Avenue (60 feet in width) extending Southwesterly from said Westwood Boulevard, to the Westerly prolongation of the Southerly boundary of said Tract No. 7803, said last mentioned prolongation being also Northerly line of the Northerly roadway of Santa Monica Boulevard (50 feet in width).

ALSO EXCEPTING THEREFROM that portion described as follows:

All that portion of Lookout Avenue, as shown on the map of the Rancho San Jose de Buenos Ayres recorded in Book 52, pages 9 to 12, both inclusive

Miscellaneous Records of Los Angeles County, and vacated by order of the Board of Supervisors of Los Angeles County January 10, 1910, as per Road Book 11, page 208, more particularly bounded and described as follows, to-wit:

Beginning at the point of intersection of the Northeasterly line of Veteran Avenue (30 feet in width) with the Southeasterly line of Ohio Avenue (60 feet in width), as shown on Map of Tract No. 8235, recorded in Book 114, pages 91, 92 and 93 of Maps, Records of said County; thence Northeasterly, along said Southeasterly line of said Ohio Avenue, to a point in the Southeasterly prolongation of the Northeasterly line of that portion of Veteran Avenue (60 feet in width) extending Northwesterly from Ohio Avenue; thence Southeasterly along said Southeasterly prolongation, to a point in the Northerly line of the Northerly roadway of Santa Monica Boulevard; thence Westerly, along said Northerly line, to a point in the Southeasterly prolongation of the Northeasterly line of said Veteran Avenue (30 feet in width); thence Northwesterly, along said last mentioned prolongation and said last mentioned Northeasterly line of Veteran Avenue, to the point of beginning.

SUBJECT to easements for street purposes over portions of Westwood Boulevard, Santa Monica Boulevard and Ohio Avenue included within the line of the above described property.

SUBJECT TO conditions, restrictions, reservations and rights of way of record. [190]

This deed is given for the express purpose of transferring from the grantor and vesting in the

grantees an undivided one-fourth (1/4) interest in and to the above described property.

TO HAVE AND TO HOLD to said grantees, their heirs or assigns forever.

IN WITNESS WHEREOF, said Corporation has caused its corporate name and seal to be affixed hereto and this instrument to be executed by its Vice-President and Assistant Secretary thereunto duly authorized, this 16th day of August, 1926.

[Seal] JANSS INVESTMENT COMPANY
By Edwin Janss, Vice-Pres.
By Chas. D. Hayes, Ass't. Sec'y.

State of California,
County of Los Angeles.—ss.

On this 16th day of August, 1926, before me, Florence B. Adams, a Notary Public in and for said County, personally appeared Edwin Janss, known to me to be the Vice-President, and Chas. D. Hayes, known to me to be the Ass't. Secretary of JANSS INVESTMENT COMPANY, the corporation that executed the within and foregoing instrument, and known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

WITNESS my hand and official seal.

[Seal] FLORENCE B. ADAMS
Notary Public in and for the County of Los Angeles, State of California. [191]

358

When recorded please return to Hollywood Branch Security Trust & Savings Bank, 6385 Hollywood Blvd., Los Angeles, California.

Compared Document, Neale, Book, Easton.

Recorded at request of Title Insurance & Tr. Co. Sep 25 1926 at 8:30 A. M. in Book 4654 Page 235 of Official Records, Los Angeles County, Cal. C. L. Logan, County Recorder.

I hereby certify that I have correctly transcribed this document in above mentioned book. M. Gragan, Copyist County Recorder's Office L. A. County, Cal.

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun. 14, 1932. [192]

PETITIONER'S EXHIBIT 17.

Certified Copy Order No. 492.

Book 3351 Page 381 of Official Records.

THIS MORTGAGE, made September first, 1923, by Charles H. Christie, a single man, hereinafter called Mortgagor, to Holmby Corporation, a corporation, hereinafter called Mortgagee.

WITNESSETH: That Mortgagor hereby mortgages to Mortgagee an undivided one-quarter (1/4) interest in the real property in the City of Los Angeles, County of Los Angeles, State of California, described as that portion of the subdivision of the Rancho San Jose de Buenos Ayres, as per map recorded in Book 26, Pages 19 to 25, Miscellaneous Records of said County, described as fol-

lows: Parcel No. 1. Beginning at the intersection of the center line of 100th Avenue (formerly Military Avenue) with the Westerly prolongation of the Northerly line of the Pacific Electric Railway right of way, as shown on map of Tract No. 5609, recorded in Book 76, pages 68 to 71 inclusive of Maps, in the office of the County Recorder of said County; thence along the center line of 100th Avenue North 35° 38′ 20″ West 2015.07 feet; thence parallel with Santa Monica Boulevard North 71° 33′ 20″ East 1003.87 feet; thence parallel with 100th Avenue South 35° 38′ 20″ East 2015.07 feet to the Northerly line of said right of way; thence Westerly 1003.87 feet along said Northerly line of said right of way to the point of beginning. Parcel No. 2. That portion of said subdivision of the Rancho San Jose de Buenos Ayres in said City, described as follows: Beginning at the intersection of the center line of Wilshire Boulevard with a line parallel with and distant Northeasterly 30 feet measured at right angles from the Northeasterly line of Lots 10, 11 and 12 in Block 13 of Said Rancho; thence Northeasterly along said center line of Wilshire Boulevard to a line parallel with and distant Southwesterly 30 feet measured at right angles from the Southwesterly line of Lot 1 in Block 18 of said Rancho; thence Southeasterly along said last mentioned parallel line to the Northwesterly prolongation of the Southeasterly line of said Lot 1; thence Northeasterly along said prolongation and Southeasterly line of said Lot 1 to

the most East- [193] erly corner of said Lot 1; thence parallel with 100th Avenue South 35° 38′ 20″ East to a line parallel with and Northwesterly 1875.01 feet, measured at right angles from the most Northerly line of Santa Monica Boulevard, as shown on map of said Tract No. 5609; thence South 71° 33′ 20″ West along said last mentioned parallel line to the parallel line first above described; thence Northwesterly along said parallel line to the point of beginning; including all buildings and improvements thereon (or that may hereafter be erected thereon); together with all and singular the tenements, hereditaments and appurtenances, water and water rights, pipes, flumes, ditches and other rights thereunto belonging or in any wise now or hereafter appertaining thereto, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

FOR THE PURPOSE OF SECURING: First. Payment of the indebtedness evidenced by one promissory note (and any renewal or extension thereof) in form as follows:

$62,020.00 Los Angeles, California,
September first, 1923.

On or before three years after date, for value received I promise to pay to Holmby Corporation, a corporation, or order, at Los Angeles, California, the sum of Sixty-two Thousand and Twenty and no/100 Dollars with interest thereon from date, until paid, at the rate of seven per cent per annum, payable semi-annually. Should interest not be so

paid, it shall become part of the principal and thereafter bear like interest therewith. Should default be made in payment of interest when due, the whole sum of principal and interest shall, at the option of the holder of this note, become immediately due. Principal and interest payable in United States gold coin. This note is secured by a mortgage upon real property.

Charles H. Christie.

U.S.I.R.S. $12.42 cancelled.

Second: Payment of attorney's fees, in a reasonable sum to be *to be* fixed by the Court and all costs and expenses in any action brought to foreclose this mortgage or in any action or proceeding affecting the rights either of Mortgagor or Mortgagee in said real property, whether such action or proceeding progress to judgment [194] or not; also such sums as Mortgagee may pay for examination of title to, or for surveying, the mortgaged property, all of which sums, including said attorney's fees, Mortgagor agrees to pay, and the same are hereby declared a lien upon said property and are secured hereby.

Third: Performance of every obligation, covenant, promise or agreement herein contained, direct or conditional, and repayment as herein provided of all sums advanced or expended by Mortgagee under the terms hereof.

A. 1. Mortgagor agrees to pay, when due, all taxes, assessments and incumbrances, which are or appear to be liens upon said property or any part

thereof, including taxes, if any levied under the law of said State, upon this mortgage or the debt secured hereby, and hereby waives all right to treat payment of such taxes as a payment on such debt or as being to any extent a discharge thereof; Mortgagor also agrees to keep said buildings insured against fire, to the amount required by, and in insurance companies satisfactory to Mortgagee, and to assign the policies therefor to Mortgagee; and promptly to pay and settle (or cause to be removed by suit or otherwise) all adverse claims against said property.

2. In case said taxes, assessments, or incumbrances so agreed to be paid by Mortgagor be not so paid, or said buildings so insured and said policies so assigned, or said adverse claims so paid, settled or removed, then Mortgagee being hereby made sole judge of the legality thereof, may, without notice to Mortgagor, pay such taxes, assessments or incumbrances, obtain such policies of insurance and pay or settle or cause to be removed by suit or otherwise all such adverse claims.

3. In the event of loss under said policies of fire insurance, the amount collected thereon shall be credited first to interest then due upon said indebtedness, next upon any advances secured hereby and the remainder, if any, may, at the option of the Mortgagee, be applied and credited upon principal, in which case interest shall thereupon cease on the amount so credited on principal; or at the option of Mortgagee, said remainder may be re-

leased to Mortgagor for the purpose of making repairs or improvements upon said property, [195] in which case Mortgagee shall not be obliged to see to the application of the sum so released, nor shall said remainder be deemed a payment of any indebtedness secured hereby.

B. Mortgagor agrees to keep said property in good condition and repair and to permit no waste thereof, and should said property or any part thereof, require any inspection, repair, cultivation, irrigation, protection, care or attention of any kind or nature not provided by Mortgagor, then Mortgagee, being hereby made sole judge of the necessity therefor, may, without notice to Mortgagor enter, or cause entry to be made upon said property, and inspect, repair, cultivate, irrigate, fertilize, fumigate, protect, care for, or maintain said property as Mortgagee may deem necessary. All sums expended by Mortgagee in doing any of the things in this mortgage authorized are secured hereby and shall be paid to Mortgagee by Mortgagor in said gold coin, on demand, with interest from date of expenditure at the rate named in the promissory note secured hereby.

C. In consideration of the indebtedness evidenced by said promissory note, Mortgagor waives all right either to apply for, or to procure, registration of said property or any part thereof under the provisions of the "Land Title Law" and hereby agrees:

1. That to bring said property or any part there-

of under the operation of said law would impair the security of this obligation;

2. That Mortgagor will not cause or permit any part of said property to be brought under the operation of said law;

3. That if, at any time, the owner of any part of said property shall file a petition for registration, or if any part of said property be registered under the provisions of said law, filing such petition for registration, or such registration shall each constitute a default in performance of the covenants and agreements herein contained on the part of Mortgagor, and the whole sum of money secured by this mortgage shall, at the option of the holder of said promissory note, become immediately due and Mortgagee may proceed to foreclose this mortgage in accordance with its terms.

D. The maker thereof promises to pay said promissory note according to its terms and conditions, and in case of default in [196] payment of principal or interest, when due, or in payment of any other money herein agreed to be paid, or in performance of any covenant or agreement herein contained on the part of Mortgagor, the whole sum of money then secured by this mortgage shall, at the option of the holder of said promissory note, become immediately due and this mortgage may thereupon, or at any time during such default, be foreclosed, and filing of a complaint in foreclosure shall be conclusive notice of the due exercise of such option.

E. In the event of foreclosure, the decree may provide that the property therein described be ordered sold en masse, or in separate parcels, at the option of plaintiff in such action.

F. It is hereby agreed, as part of the security of Mortgagee, that if default should be made in payment of the principal of said promissory note, or in payment of any interest thereon when due, or in any other payment in this mortgage provided, or in any covenant or agreement herein provided to be performed by Mortgagor, then, and in each such case Mortgagee, without limitation or restriction by any present or future law, shall have the absolute right, upon commencement of any judicial proceedings to enforce any right under this mortgage, including foreclosure thereof, to appointment of a receiver of the property hereby mortgaged and of the revenues, rents, profits and other income thereof, and that said receiver shall have (in addition to such other powers as the court making such appointment may confer), full power to collect all such income and after paying all necessary expenses of such receivership and of operation, maintenance and repair of said property, to apply the balance to payment of any sums then due hereunder.

G. Mortgagor agrees that Mortgagee may at any time, without notice, and without affecting the personal liability of any person for payment of indebtedness hereby secured, or the lien of this mortgage upon the remainder of the mortgaged property for the unpaid portion of said indebtedness,

release any part of said mortgaged property from the lien of this mortgage.

H. Every covenant, stipulation, promise and agreement herein shall bind and inure to the benefit of Mortgagor and Mortgagee [197] and their respective successors in interest.

I. In this mortgage, whenever the context so requires, the masculine gender includes the feminine, the singular number includes the plural, and the words "Promissory Note" include all promissory notes or other evidences of indebtedness secured hereby.

The Mortgagee agrees, from time to time, on demand of the Mortgagors, to release from the lien of this mortgage all or any part of the mortgaged property upon payment being made by the Mortgagors on account of the principal sum secured by this Mortgage, at the rate of $1250.00 per acre for each acre or part of an acre so released together with all accrued interest upon the sums so paid to date of payment. For example: Having in mind the fact that this mortgage covers only an undivided one-quarter interest in the lands above described; should the Mortgagors desire to release a particular five acre piece, the total sum required to release such five acre piece from the lien of this mortgage on the undivided one-quarter interest in such five acre piece would be five times $1250.00 or $6250.00. All releases to be made at the expense of the Mortgagor.

WITNESS: the hand and seal of Mortgagor.

CHARLES H. CHRISTIE

State of California,
County of Los Angeles—ss.

On this 27th day of October, 1923, before me, Claude Hill, a Notary Public in and for said County, personally appeared Charles H. Christie, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same. Witness my hand and official seal.

[Notarial Seal] CLAUDE HILL,
Notary Public in and for the County of Los Angeles, State of California.
My Comm. Exp. May 22nd, 1924.

#368. Copy of original recorded at request of Title Ins. & Tr. Co. Dec. 20, 1923, at 8:30 A.M. Copyist #192. Compared. C. L. Logan, County Recorder, By E. Randolph, Deputy. [199]

State of California,
County of Los Angeles—ss.

I hereby certify the foregoing to be a full, true and correct copy without release and assignment stamps of the instrument appearing recorded in Book 3351 of Official Records, Page 381, Records of Los Angeles County, and that I have carefully compared the same with the original record.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, this 10 day of June, 1932.

[Seal] C. L. LOGAN, County Recorder
By L. S. Van Culin (56) Deputy.

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun 14, 1932. [198]

U. S. BOARD OF TAX APPEALS
DIV. 5 DOCKET 42053
ADMITTED IN EVIDENCE
JUN 14 1932
PETITIONER'S
EXHIBIT 18
RESPONDENT'S

Beverly Hills, Calif.
Sept.5, 1923.

Mrs. Marguerite S. Anderson,
Beverly Hills Hotel.

Confirming our conversation relative to the Janss Investment and Charlie Christie land deal.

Charlie and I agree to purchase from Janss 120.5 acres for $180,750(for one-half interest, Janss retaining one-half), payable $60,250 cash in September and October, and notes for the balance of $120,500. On this deal I to-day paid $5000, on September installment. I also entered into an agreement to purchase from Charlie Christie a 1/4 interest in 107 acres, the total price of the acreage being $321,000 and our 1.4 will amount to $80,250. Under the agreement by which Charlie is buying this land from Janss he is to pay $107,000 cash and notes for $214,000. The cash payments are to be made in September an d October and I to-day paid $6,250, which is 1.4 of rhe cash payment due in Sept.

I understand from you that you agree to these transacti ns and agree to payment of your proportion of th cash payments from any funds now held jointly by us and that you assume liability for your proportion of future payments, sudh liability to attach to your separate funds as well as those held jointly by us.

It is the belief of Janss and Charlie that with the placing of this property on the market, the notes will be paid off from sales and we will not be called upon for cash to meet same.

Should you for any reason have occasion, in my absence ~~in case of any misunderstanding arising later,~~ to secure further

peals. Admitted in evidence Jan 11, [illegible]. [illegible]

$ 62,020.00 Los Angeles, California, September first, 1923.

On or before three years, after date,

for value received, we, or either of us, promise to pay

HOLMBY CORPORATION, A CORPORATION, or order,

at Los Angeles, California,

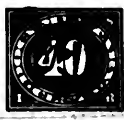
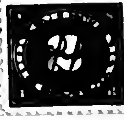
the sum of SIXTY TWO THOUSAND AND TWENTY AND NO/100 - - - - - - - - - - - - - Dollars,

with interest thereon from date, until paid, at the rate of seven,

per cent. per annum, payable semi-annually.
Should interest not be so paid, it shall become part of the principal and thereafter bear like interest therewith. Should default be made in payment of interest when due, the whole sum of principal and interest shall, at the option of the holder of this note, become immediately due. Principal and interest payable in United States gold coin. This note is secured by a mortgage upon real property.

Stanley Anderson
Marguerite S Anderson

U. S. BOARD OF TAX APPEALS
DIV. 5 to DOCKET 42253
ADMITTED IN EVIDENCE
JUN 14 1932
PETITIONER'S EXHIBIT 19

19 a

Date	Interest Amount	Interest Paid To	Principal	Balance
1-15-24			10,000.00	50,000.00
5-16-24			20,000.00	30,000.00
7-23-24	$2081.29	3-1-24		
1-15-25	834.30	on acct.		

Pay to the order of The Pacific Mutual Life Insurance Company of California.

HOLMBY CORPORATION

By [signature] Vice-President

By [signature] Secretary

Pay to the order of Janss Investment Company without recourse.

THE PACIFIC MUTUAL LIFE INSURANCE COMPANY OF CALIFORNIA

By [signature] Vicepresident

By [signature] Assistant Secretary

19 B

$45,000.00 Los Angeles, California, January 31st, 1924

On January 31st, A.D., 1927---------- after date, and for value received,

we, jointly and severally ------------------------ promise to pay to the

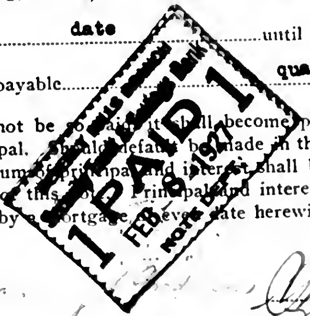
SECURITY TRUST & SAVINGS BANK, or order, at its Head Office, Fifth and Spring Sts., in the

City of Los Angeles, California, the sum of FORTY-FIVE THOUSAND---------- Dollars,

with interest from date until paid at the rate of seven

per cent. per annum, payable quarterly

Should the interest not be so paid it shall become part of the principal and thereafter bear like interest as the principal. Should default be made in the payment of any installment of interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Principal and interest payable in Gold Coin of the United States. This note is secured by a mortgage of even date herewith upon real property.



Stanley S. Anderson

Marguerite S. Anderson

Telephone

P. O. Address

Beverly Hills Hotel

CHT.IS.

19C

Mortgage Note—*501—2-23—3M

No. 33053

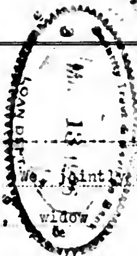
PAID ON WITHIN NOTE

INTEREST			PRINCIPAL	
DATE	AMOUNT		DATE	AMOUNT
MAY 12 '24	603	75		
AUG 8 '24	787	50		
[illegible] 6 '24	787	50		
FEB 2 - '25	787	50		
APR 27 '25	787	50		
JUL 30 '25	787	50		
OCT 22 '25	787	50		
FEB 11 '26	787	50		
APR 28 '26	787	50		
AUG 2 '26	787	50		
10-29-26	787	50		
1-30-27	787	50		
FEB 8 1927	78	75		45,000 00

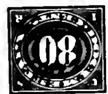
19

36992

36067



$ 14,000.00 Los Angeles, California, February 29, 1924



Two Years after date,

for value received, We, jointly and severally promise to pay

to Mary Sturdy, widow

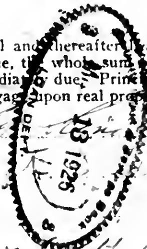
or order,

at Beverly Hills, California

the sum of Fourteen Thousand and 00/100 Dollars,

with interest thereon from date until paid, at the rate of seven

per cent. per annum, payable quarterly.
Should interest not be so paid, it shall become part of the principal and thereafter bear like interest therewith. Should default be made in payment of interest when due, the whole sum of principal and interest shall, at the option of the holder of this note, become immediately due. Principal and interest payable in United States gold coin. This note is secured by a mortgage upon real property.



Credit 1 a/c

Form 97—15M—9-23

19-8

Mary Sturdy

Interest Paid to Feby 29 - 1925 Mary Sturdy

JUN 2 '25

Interest paid to May 29, 1924.

245.00 returned on 245 to Anders O K. Mary S. Sturdy

Date	Paid % Int.	Prin.	Bal.
MAY 22 '25	490.00		
SEP 15 '25	245.00		
DEC 4 '25	245.00		
MAR 13 '26	280.41	14000	0

Mary Sturdy

Dec. 1st 1925 S.S.G.

$ 50,000.00 Los Angeles, California ~~December 30th~~ 1925

On or before six (6) months after date, for value received

We or either of us promise to pay to

Renewed by note [illegible] 5/24/26

JANSS INVESTMENT COMPANY
A CORPORATION

or order, at its office in Los Angeles, California

the sum of FIFTY THOUSAND and no/100 Dollars,

with interest from date until paid, at the rate of seven (7) per cent

per annum, payable quarterly; should the interest not be so paid, it shall become part of the principal and thereafter bear like interest as the principal. Should default be made in the payment of any installment of interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. And in case suit or action is instituted to collect this note or any portion thereof promise and agree to pay in addition to the costs and disbursements provided by statute, ten per cent on the amount then unpaid as attorney's fees in said suit or action. Principal and interest payable in Gold Coin of the United States of America of the present standard. The makers and endorsers of this note hereby waive diligence, demand, protest and notice.

Stanley C. Anderson
Marguerite E. Anderson

This note secured by

1. Address

2. Address

3. Address

19-G

$20,000.00 Los Angeles, California March 11, 1926.

Six months after date, for value received

we, or either of us promise to pay to

JANSS Investment COMPANY
A CORPORATION

or order, at its office in Los Angeles, California

the sum of Twenty Thousand - Dollars,

with interest from date until paid, at the rate of 7 per cent

per annum, payable quarterly; should the interest not be so paid, it shall become part of the principal and thereafter bear like interest as the principal. Should default be made in the payment of any installment of interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. And in case suit or action is instituted to collect this note or any portion thereof we promise and agree to pay in addition to the costs and disbursements provided by statute, ten per cent on the amount then unpaid as attorney's fees in said suit or action. Principal and interest payable in Gold Coin of the United States of America of the present standard. The makers and endorsers of this note hereby waive diligence, demand, protest and notice.

Stanley S. Anderson

Marguerite S. Anderson

This note secured by

Assignment of Syndicate

Interest, and profits or

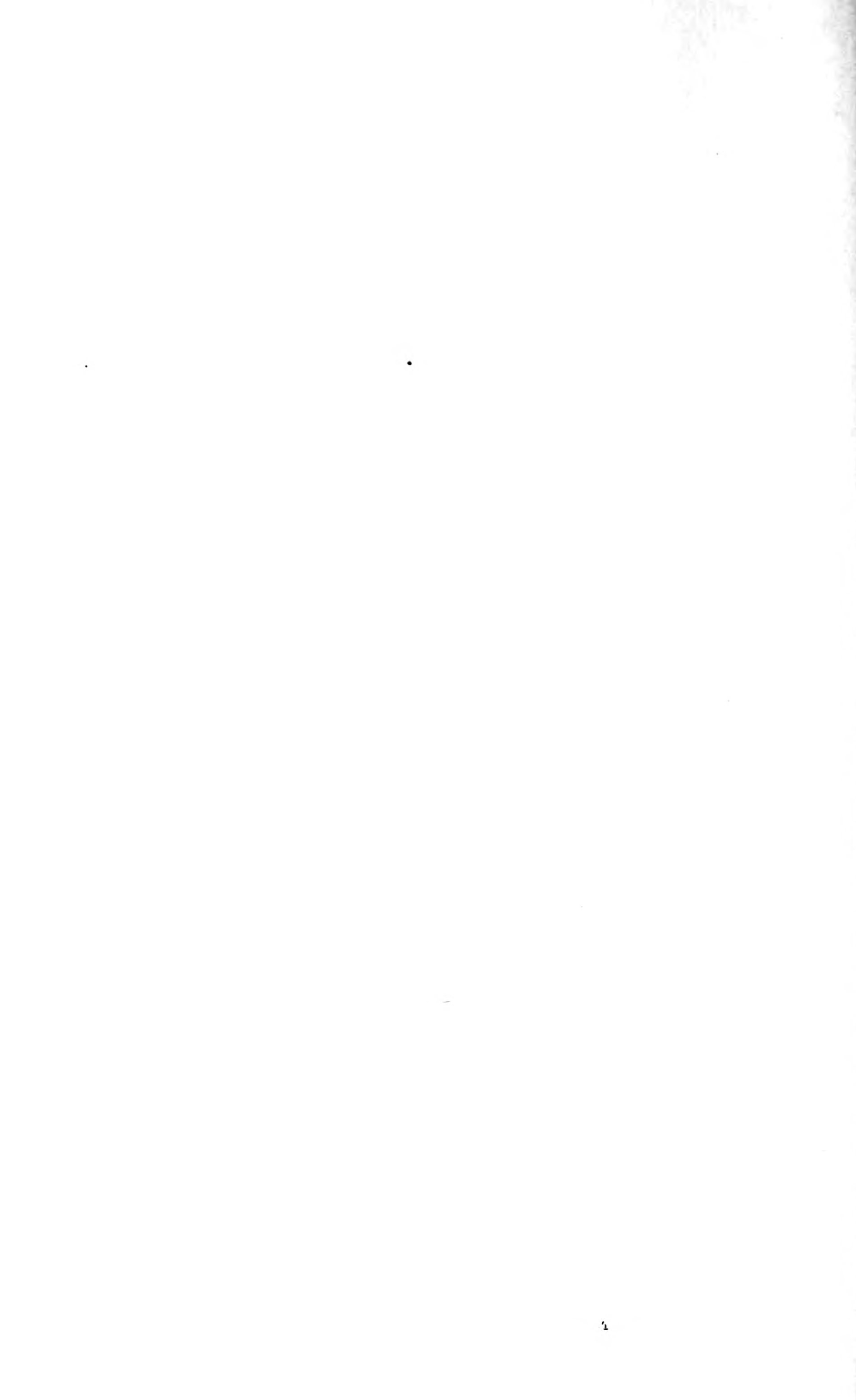
commissions.

1. Address Beverly Hills Hotel, Beverly Hills.

2. Address

3. Address

19 [illegible]



$ 80,000.00 Los Angeles, California APRIL 20, 1926

ON OR BEFORE TWO (2) YEARS after date, for value received

We, Stanley S. Anderson and Marguerite S. Anderson promise to pay to

JANSS INVESTMENT COMPANY
A CORPORATION

or order, at its office in Los Angeles, California

the sum of EIGHTY THOUSAND AND NO/100 Dollars,

with interest from APRIL 20th, 1926 until paid, at the rate of SEVEN (7%) per cent per annum, payable QUARTERLY; should the interest not be so paid, it shall become part of the principal and thereafter bear like interest as the principal. Should default be made in the payment of any installment of interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. And in case suit or action is instituted to collect this note or any portion thereof WE promise and agree to pay in addition to the costs and disbursements provided by statute, ten per cent on the amount then unpaid as attorney's fees in said suit or action. Principal and interest payable in Gold Coin of the United States of America of the present standard. The makers and endorsers of this note hereby waive diligence, demand, protest and notice.

Stanley S. Anderson

Marguerite S. Anderson

This note secured by

Assignment of interest in
Christie -Anderson-Janss Syndicate
Christie Film Snydicate
Fox Hills Realty Co.
Charles H.Christie Film Site
and deeds to
portions of Blks.13 & 14 of
subdivision of Rancho San Jose
de Buenos Ayres, and certain lots
in Tracts 7514-7803-8235.

1. Address

2. Address

3. Address

19-2

Los Angeles, California, February 7, 1927

No.......................... $50,000.00

On or before two years after date, for value received, I/we promise to pay to JANSS INVESTMENT COMPANY OF LOS ANGELES, or order, at its Main Office in the City of Los Angeles, Fifty Thousand and no/100 Dollars, with interest from date, at the rate of Seven per cent. per annum, payable qtly., until paid, and attorney's fees of ten per cent on the amount then unpaid, if placed in the hands of an attorney for collection, or if suit be commenced or other proceeding be taken to enforce the payment of this note, or to sell any of the collateral securing same. Principal and interest payable in Gold Coin of the United States of America of the present standard. The makers, sureties, guarantors and endorsers of this note hereby consent to renewals and extensions of time at or after the maturity hereof and to the release, surrender or substitutions of collateral, without notice to them or either of them, and hereby waive diligence, presentment, protest and demand and notice of every kind.

I/we do hereby pledge to and deposit with JANSS INVESTMENT COMPANY OF LOS ANGELES as collateral security for the payment of this note and of all other obligations of the undersigned in favor of the holder hereof, direct, indirect or contingent, due or to be due, or that may be hereafter contracted or incurred.

Assignment of equity in Tracts 7514, 8235, and Blocks 1 to 16, inclusive, of Tract 7803, all of which is owned by the undersigned, and the market value of which is now .... Dollars, and with this condition, viz.:

In the event of depreciation in value of any of the collateral pledged hereunder or if such collateral has become unsatisfactory to the holder hereof, the holder hereof shall have the right at any time to call for such additional collateral as it may deem proper, by demand to that effect in writing, mailed to or left at the address endorsed hereon or to or at the last known place of business or residence of the undersigned, with the same effect as if delivered to the undersigned in person, and on the failure of the undersigned to forthwith comply with such call, this note (and, at the option of the holder hereof, all obligations of the undersigned herein mentioned) shall thereupon and without further notice or demand forthwith be and become immediately due and payable, anything herein or elsewhere contained to the contrary notwithstanding, and the undersigned in case of any such accelerated maturity, or upon any default of the undersigned in the prompt payment or due performance of any of the obligations herein mentioned, hereby authorizes and empowers the holder hereof at its option, to collect or sell, assign and deliver the whole or any part of the above named collateral, or any substitute therefor, or any additions thereto, or any other securities or property coming to or left in the possession of the

holder hereof by or for the undersigned, whether for the express purpose of being used by the holder hereof as collateral security or for any other or different purpose, or in transit to or from the holder hereof by mail or carrier or in the hands of any correspondent or agent of the holder hereof for any of said purposes, at public or private sale, or at any broker's board or stock exchange, at any time or times hereafter, for cash, upon credit or for future delivery, without the necessity of said collateral being present at any such sale or in view of prospective purchasers thereof and without demand, advertisement or notice, the manner of sale and any such demand, advertisement and/or notice being hereby expressly waived. And upon such sale the holder hereof may become the purchaser of the whole or any part of such property so sold, discharged from all trusts and claims and free from any right of redemption; and in case of any such sale or disposal, the holder hereof may apply the proceeds thereof to the payment of the expenses of such sale, broker's commissions, attorney's fees and all charges paid or incurred by the holder hereof pertaining to the safekeeping, protecting, insuring, supervising, manufacturing, preparing for delivery and/or sale and/or delivery and/or sale of same (all of which the undersigned agrees to pay, including any taxes or other charges imposed by law), the holder hereof to apply the remainder of said proceeds to pay one or more or all of the obligations or liabilities of the undersigned herein mentioned, in such order or in

such proportions as the holder hereof may elect, whether then due or not according to their terms, and return the overplus, if any, to the undersigned, and the undersigned agrees to pay the holder hereof any deficiency arising from any such sale or sales without necessity of demand therefor, such demand being hereby waived. In case of any sale by the holder hereof of any of said property on credit or for future delivery, said property so sold may be retained by the holder hereof until the selling price is paid by the purchaser, but said holder hereof shall incur no liability in case of the failure of the purchaser to take up and pay for the property so sold. In case of any such failure the said property may be again and from time to time sold.

The holder hereof may transfer this note, and in case of such transfer, said collateral security may also be transferred, and the transferee in such case shall have the same rights and powers with reference to this note and the collaterals transferred herewith as are hereby given to, or as may be otherwise possessed by said holder. If said collateral shall be so transferred the transferor shall be automatically relieved and fully discharged of all duties and liability with reference to said transferred collateral.

The undersigned and each and every endorser, guarantor and surety hereof, hereby authorizes and empowers the holder hereof, at its option, upon the maturity hereof, to appropriate and apply to the payment and extinguishment of any of or either of

their then obligations or liabilities to the holder hereof and whether or not this note may then be in any manner secured or unsecured, any and all amounts, funds or property then in the hands of the holder hereof, or on deposit or otherwise to the credit of or belonging to the undersigned or any endorser, guarantor or surety hereof; which right, at the option of the holder hereof in regard to property other than money, funds or credits, may be enforced in like manner as hereinabove set forth.

All provisions of law, in equity, and by statute providing for, relating to, or pertaining to pledges and the sale of pledged property, or which prescribe, prohibit, limit or restrict the right to, or conditions, notice or manner of sale, together with all limitations of law in equity or by statute on the right of attachment in the case of secured obligations, are hereby expressly waived by the undersigned. Should this note be signed by more than one person, firm or corporation, all covenants and obligations herein contained shall be considered for all purposes as joint and several covenants and obligations of each signer hereof.

STANLEY S. ANDERSON
MARGUERITE S. ANDERSON

Address..

(Paid) —JANSS INVESTMENT CO. D.W.H.

19 J [210]

[Printer's Note]: As the printed form on the reverse of the preceding exhibit has not been filled in, the same is not set forth in printed record.

Los Angeles, California, December 29, 1927

No........................... $20,000.00

On or before Ninety (90) Days after date; for value received, I/we promise to pay to JANSS INVESTMENT COMPANY OF LOS ANGELES, or order, at its Main Office in the City of Los Angeles, Twenty Thousand and No/100 Dollars, with interest from date, at the rate of seven per cent. per annum payable at maturity, until paid, and attorney's fees of ten per cent. on the amount then unpaid, if placed in the hands of an attorney for collection, or if suit be commenced or other proceeding be taken to enforce the payment of this note, or to sell any of the collateral securing same. Principal and interest payable in Gold Coin of the United States of America of the present standard. The makers, sureties, guarantors and endorsers of this note hereby consent to renewals and extensions of time at or after the maturity hereof and to the release, surrender or substitutions of collateral, without notice to them or either of them, and hereby waive diligence, presentment, protest and demand and notice of every kind.

I/we do hereby pledge to and deposit with JANSS INVESTMENT COMPANY OF LOS ANGELES as collateral security for the payment of this note and of all other obligations of the undersigned in favor of the holder hereof, direct, indirect or contingent, due or to be due, or that may be hereafter contracted or incurred.

Assignment of equity in Tracts 7514 - 7803 - 8235

and 10021, all of which is owned by the undersigned, and the market value of which is now.................. Dollars, and with this condition, viz.:

In the event of depreciation in value of any of the collateral pledged hereunder or if such collateral has become unsatisfactory to the holder hereof, the holder hereof shall have the right at any time to call for such additional collateral as it may deem proper, by demand to that effect in writing, mailed to or left at the address endorsed hereon or to or at the last known place of business or residence of the undersigned, with the same effect as if delivered to the undersigned in person, and on the failure of the undersigned to forthwith comply with such call, this note (and, at the option of the holder hereof, all obligations of the undersigned herein mentioned) shall thereupon and without further notice or demand forthwith be and become immediately due and payable, anything herein or elsewhere contained to the contrary notwithstanding, and the undersigned in case of any such accelerated maturity, or upon any default of the undersigned in the prompt payment or due performance of any of the obligations herein mentioned, hereby authorizes and empowers the holder hereof at its option, to collect or sell, assign and deliver the whole or any part of the above named collateral, or any substitute therefor, or any additions thereto, or any other securities or property coming to or left in the possession of the holder hereof by or for the undersigned, whether for the express purpose of being used by the holder

hereof as collateral security or for any other or different purpose, or in transit to or from the holder hereof by mail or carrier or in the hands of any correspondent or agent of the holder hereof for any of said purposes, at public or private sale, or at any broker's board or stock exchange, at any time or times hereafter, for cash, upon credit or for future delivery, without the necessity of said collateral being present at any such sale or in view of prospective purchasers thereof and without demand, advertisement or notice, the manner of sale and any such demand, advertisement and/or notice being hereby expressly waived. And upon such sale the holder hereof may become the purchaser of the whole or any part of such property so sold, discharged from all trusts and claims and free from any right of redemption; and in case of any such sale or disposal, the holder hereof may apply the proceeds thereof to the payment of the expenses of such sale, broker's commissions, attorney's fees and all charges paid or incurred by the holder hereof pertaining to the safekeeping, protecting, insuring, supervising, manufacturing, preparing for delivery and/or sale and/or delivery and/or sale of same (all of which the undersigned agrees to pay, including any taxes or other charges imposed by law), the holder hereof to apply the remainder of said proceeds to pay one or more or all of the obligations or liabilities of the undersigned herein mentioned, in such order or in such proportions as the holder hereof may elect, whether then due or not according to their terms,

and return the overplus, if any, to the undersigned, and the undersigned agrees to pay the holder hereof any deficiency arising from any such sale or sales without necessity of demand therefor, such demand being hereby waived. In case of any sale by the holder hereof of any of said property on credit or for future delivery, said property so sold may be retained by the holder hereof until the selling price is paid by the purchaser, but said holder hereof shall incur no liability in case of the failure of the purchaser to take up and pay for the property so sold. In case of any such failure the said property may be again and from time to time sold.

The holder hereof may transfer this note, and in case of such transfer, said collateral security may also be transferred, and the transferee in such case shall have the same rights and powers with reference to this note and the collaterals transferred herewith as are hereby given to, or as may be otherwise possessed by said holder. If said collateral shall be so transferred the transferor shall be automatically relieved and fully discharged of all duties and liability with reference to said transferred collateral.

The undersigned and each and every endorser, guarantor and surety hereof, hereby authorizes and empowers the holder hereof, at its option, upon the maturity hereof, to appropriate and apply to the payment and extinguishment of any of or either of their then obligations or liabilities to the holder hereof and whether or not this note may then be in

any manner secured or unsecured, any and all amounts, funds or property then in the hands of the holder hereof, or on deposit or otherwise to the credit of or belonging to the undersigned or any endorser, guarantor or surety hereof; which right, at the option of the holder hereof in regard to property other than money, funds or credits, may be enforced in like manner as hereinabove set forth.

All provisions of law, in equity, and by statute providing for, relating to, or pertaining to pledges and the sale of pledged property, or which prescribe, prohibit, limit or restrict the right to, or conditions, notice or manner of sale, together with all limitations of law in equity or by statute on the right of attachment in the case of secured obligations, are hereby expressly waived by the undersigned. Should this note be signed by more than one person, firm or corporation, all covenants and obligations herein contained shall be considered for all purposes as joint and several covenants and obligations of each signer hereof.

STANLEY S. ANDERSON
MARGUERITE S. ANDERSON

Address..

(Paid 5/15/28 thru advances on available funds. Synd. #1 Janss Inv. Co., ACJ.)

19 L [212]

[Printer's Note]: As the printed form on the reverse of the preceding exhibit has not been filled in, the same is not set forth in printed record.

Los Angeles, California, April 18, 1928.

No.......................... $10,000.00

On or before Six Months after date, for value received, I/we promise to pay to JANSS INVESTMENT COMPANY OF LOS ANGELES, or order, at its Main Office in the City of Los Angeles, Ten Thousand and 00/100 Dollars, with interest from date, at the rate of Seven per cent. per annum until paid, and attorney's fees of ten per cent. on the amount then unpaid, if placed in the hands of an attorney for collection, or if suit be commenced or other proceeding be taken to enforce the payment of this note, or to sell any of the collateral securing same. Principal and interest payable in Gold Coin of the United States of America of the present standard. The makers, sureties, guarantors and endorsers of this note hereby consent to renewals and extensions of time at or after maturity hereof and to the release, surrender or substitutions of collateral, without notice to them or either of them, and hereby waive diligence, presentment, protest and demand and notice of every kind.

I/we do hereby pledge to and deposit with JANSS INVESTMENT COMPANY OF LOS ANGELES as collateral security for the payment of this note and of all other obligations of the undersigned in favor of the holder hereof, direct, indirect or contingent, due or to be due, or that may be hereafter contracted or incurred.

Secured by Equity in Tracts 7514, 7803, 8235 & 10021, all of which is owned by the undersigned,

and the market value of which is now..................................... Dollars, and with this condition, viz.:

In the event of depreciation in value of any of the collateral pledged hereunder or if such collateral has become unsatisfactory to the holder hereof, the holder hereof shall have the right at any time to call for such additional collateral as it may deem proper, by demand to that effect in writing, mailed to or left at the address endorsed hereon or to or at the last known place of business or residence of the undersigned, with the same effect as if delivered to the undersigned in person, and on the failure of the undersigned to forthwith comply with such call, this note (and, at the option of the holder hereof, all obligations of the undersigned herein mentioned) shall thereupon and without further notice or demand forthwith be and become immediately due and payable, anything herein or elsewhere contained to the contrary notwithstanding, and the undersigned in case of any such accelerated maturity, or upon any default of the undersigned in the prompt payment or due performance of any of the obligations herein mentioned, hereby authorizes and empowers the holder hereof at its option, to collect or sell, assign and deliver the whole or any part of the above named collateral, or any substitute therefor, or any additions thereto, or any other securities or property coming to or left in the possession of the holder hereof by or for the undersigned, whether for the express purpose of being used by the holder hereof as collateral security or for any other or

different purpose, or in transit to or from the holder hereof by mail or carrier or in the hands of any correspondent or agent of the holder hereof for any of said purposes, at public or private sale, or at any broker's board or stock exchange, at any time or times hereafter, for cash, upon credit or for future delivery, without the necessity of said collateral being present at any such sale or in view of prospective purchasers thereof and without demand, advertisement or notice, the manner of sale and any such demand, advertisement and/or notice being hereby expressly waived. And upon such sale the holder hereof may become the purchaser of the whole or any part of such property so sold, discharged from all trusts and claims and free from any right of redemption; and in case of any such sale or disposal, the holder hereof may apply the proceeds thereof to the payment of the expenses of such sale, broker's commissions, attorney's fees and all charges paid or incurred by the holder hereof pertaining to the safekeeping, protecting, insuring, supervising, manufacturing, preparing for delivery and/or sale and/or delivery and/or sale of same (all of which the undersigned agrees to pay, including any taxes or other charges imposed by law), the holder hereof to apply the remainder of said proceeds to pay one or more or all of the obligations or liabilities of the undersigned herein mentioned, in such order or in such proportions as the holder hereof may elect, whether then due or not according to their terms, and return the overplus, if any, to the undersigned,

and the undersigned agrees to pay the holder hereof any deficiency arising from any such sale or sales without necessity of demand therefor, such demand being hereby waived. In case of any sale by the holder hereof of any of said property on credit or for future delivery, said property so sold may be retained by the holder hereof until the selling price is paid by the purchaser, but said holder hereof shall incur no liability in case of the failure of the purchaser to take up and pay for the property so sold. In case of any such failure the said property may be again and from time to time sold.

The holder hereof may transfer this note, and in case of such transfer, said collateral security may also be transferred, and the transferee in such case shall have the same rights and powers with reference to this note and the collaterals transferred herewith as are hereby given to, or as may be otherwise possessed by said holder. If said collateral shall be so transferred the transferor shall be automatically relieved and fully discharged of all duties and liability with reference to said transferred collateral.

The undersigned and each and every endorser, guarantor and surety hereof, hereby authorizes and empowers the holder hereof, at its option, upon the maturity hereof, to appropriate and apply to the payment and extinguishment of any of or either of their then obligations or liabilities to the holder hereof and whether or not this note may then be in any manner secured or unsecured, any and all

amounts, funds or property then in the hands of the holder hereof, or on deposit or otherwise to the credit of or belonging to the undersigned or any endorser, guarantor or surety hereof; which right, at the option of the holder hereof in regard to property other than money, funds or credits, may be enforced in like manner as hereinabove set forth.

All provisions of law, in equity, and by statute providing for, relating to, or pertaining to pledges and the sale of pledged property, or which prescribe, prohibit, limit or restrict the right to, or conditions, notice or manner of sale, together with all limitations of law in equity or by statute on the right of attachment in the case of secured obligations, are hereby expressly waived by the undersigned. Should this note be signed by more than one person, firm or corporation, all covenants and obligations herein contained shall be considered for all purposes as joint and several covenants and obligations of each signer hereof.

MARGUERITE S. ANDERSON
STANLEY S. ANDERSON

Address: 1341 Benedict Con Road, Bev. Hills.

19-N [214]

Paid 5/15/28 thru advances on available funds. Synd. No. 1 Janss Inv. Co. ACJ.

[Printer's Note]: As the printed form on the reverse of the preceding exhibit has not been filled *in*, the same is not set forth in printed record.

Los Angeles, California, February 13, 1929.

No.......................... $75,000.00

On or before Nine (9) Months after date, for value received, I/we promise to pay to JANSS

INVESTMENT CORPORATION OF LOS ANGELES, or order, at its Main Office in the City of Los Angeles, Seventy-Five Thousand and No/100 ($75,000.00) Dollars, with interest from date, at the rate of seven per cent. per annum from date until paid, and attorney's fees of ten per cent on the amount then unpaid, if placed in the hands of an attorney for collection, or if suit be commenced or other proceeding be taken to enforce the payment of this note, or to sell any of the collateral securing same. Principal and interest payable in Gold Coin of the United States of America of the present standard. The makers, sureties, guarantors and endorsers of this note hereby consent to renewals and extensions of time at or after the maturity hereof and to the release, surrender or substitutions of collateral, without notice to them or either of them, and hereby waive diligence, presentment, protest and demand and notice of every kind.

I/we do hereby pledge to and deposit with JANSS INVESTMENT COMPANY OF LOS ANGELES as collateral security for the payment of this note and of all other obligations of the undersigned in favor of the holder hereof, direct, indirect or contingent, due or to be due, or that may be hereafter contracted or incurred.

Assignment of equities in syndicates known as Anderson-Janss Syndicate Nos. 1-2-3, all of which is owned by the undersigned, and the market value of which is now..............................Dollars, and with this condition, viz.:

In the event of depreciation in value of any of the collateral pledged hereunder or if such collateral has become unsatisfactory to the holder hereof, the holder hereof shall have the right at any time to call for such additional collateral as it may deem proper, by demand to that effect in writing, mailed to or left at the address endorsed hereon or to or at the last known place of business or residence of the undersigned, with the same effect as if delivered to the undersigned in person, and on the failure of the undersigned to forthwith comply with such call, this note (and, at the option of the holder hereof, all obligations of the undersigned herein mentioned) shall thereupon and without further notice or demand forthwith be and become immediately due and payable, anything herein or elsewhere contained to the contrary notwithstanding, and the undersigned in case of any such accelerated maturity, or upon any default of the undersigned in the prompt payment or due performance of any of the obligations herein mentioned, hereby authorizes and empowers the holder hereof at its option, to collect or sell, assign and deliver the whole or any part of the above named collateral, or any substitute therefor, or any additions thereto, or any other securities or property coming to or left in the possession of the holder hereof by or for the undersigned, whether for the express purpose of being used by the holder hereof as collateral security or for any other or different purpose, or in transit to or from the holder hereof by mail or carrier or in the hands of any

correspondent or agent of the holder hereof for any of said purposes, at public or private sale, or at any broker's board or stock exchange, at any time or times hereafter, for cash, upon credit or for future delivery, without the necessity of said collateral being present at any such sale or in view of prospective purchasers thereof and without demand, advertisement or notice, the manner of sale and any such demand, advertisement and/or notice being hereby expressly waived. And upon such sale the holder hereof may become the purchaser of the whole or any part of such property so sold, discharged from all trusts and claims and free from any right of redemption; and in case of any such sale or disposal, the holder hereof may apply the proceeds thereof to the payment of the expenses of such sale, broker's commissions, attorney's fees and all charges paid or incurred by the holder hereof pertaining to the safekeeping, protecting, insuring, supervising, manufacturing, preparing for delivery and/or sale and/or delivery and/or sale of same (all of which the undersigned agrees to pay, including any taxes or other charges imposed by law), the holder hereof to apply the remainder of said proceeds to pay one or more or all of the obligations or liabilities of the undersigned herein mentioned, in such order or in such proportions as the holder hereof may elect, whether then due or not according to their terms, and return the overplus, if any, to the undersigned, and the undersigned agrees to pay the holder hereof any deficiency arising from any such sale or sales

without necessity of demand therefor, such demand being hereby waived. In case of any sale by the holder hereof of any of said property on credit or for future delivery, said property so sold may be retained by the holder hereof until the selling price is paid by the purchaser, but said holder hereof shall incur no liability in case of the failure of the purchaser to take up and pay for the property so sold. In case of any such failure the said property may be again and from time to time sold.

The holder hereof may transfer this note, and in case of such transfer, said collateral security may also be transferred, and the transferee in such case shall have the same rights and powers with reference to this note and the collaterals transferred herewith as are hereby given to, or as may be otherwise possessed by said holder. If said collateral shall be so transferred the transferor shall be automatically relieved and fully discharged of all duties and liability with reference to said transferred collateral.

The undersigned and each and every endorser, guarantor and surety hereof, hereby authorizes and empowers the holder hereof, at its option, upon the maturity hereof, to appropriate and apply to the payment and extinguishment of any of or either of their then obligations or liabilities to the holder hereof and whether or not this note may then be in any manner secured or unsecured, any and all amounts, funds or property then in the hands of the holder hereof, or on deposit or otherwise to the

credit of or belonging to the undersigned or any endorser, guarantor or surety hereof; which right, at the option of the holder hereof in regard to property other than money, funds or credits, may be enforced in like manner as hereinabove set forth.

All provisions of law, in equity, and by statute providing for, relating to, or pertaining to pledges and the sale of pledged property, or which prescribe, prohibit, limit or restrict the right to, or conditions, notice or manner of sale, together with all limitations of law in equity or by statute on the right of attachment in the case of secured obligations, are hereby expressly waived by the undersigned. Should this note be signed by more than one person, firm or corporation, all covenants and obligations herein contained shall be considered for all purposes as joint and several covenants and obligations of each signer hereof.

STANLEY S. ANDERSON
MARGUERITE S. ANDERSON

Address: 1341 Benedict Canyon Road, Beverly Hills, California.

(Paid by Journal Entry 5/22/30. L. L. Fuller.)

(O. K. WF.) 19 P [216]

[Printer's Note]: As the printed form on the reverse of the preceding exhibit has not been filled in, the same is not set forth in printed record.

$15,000.00

Los Angeles, California, September 4th, 1929

On demand after date, FOR VALUE RECEIVED I promise to pay to JANSS INVEST-

MENT CORPORATION, a corporation, or order, at its office in the City of Los Angeles, California, the sum of Fifteen Thousand and no/100 Dollars, with interest thereon from date until paid, at the rate of Seven per cent. per annum, payable quarterly; Principal and Interest payable in gold coin of the United States. Should interest not be so paid, it shall become part of the principal and thereafter bear like interest. Should default be made in payment of any installment of interest or principal when due the unpaid balance of principal and interest shall, at the option of the holder of this note, become immediately due. Should an attorney be employed to collect, or should suit be commenced to enforce the payment of this note, the undersigned agree to pay a reasonable sum additional as attorney's fees.

AS SECURITY for the payment of this note and the interest herein, and any expenses, including attorney's fees, which may accrue hereon, and any extension or renewal hereof, the undersigned have deposited with, and hereby pledge and assign to, said JANNS INVESTMENT CORPORATION the following personal property of which the undersigned.................... the owner, the same being deposited at the sole risk and expense of the undersigned, namely: Assignment of equities in syndicates known as Anderson-Janss Syndicate Nos. 1-2-3, the market value of which is now $......................., on the following terms and conditions, namely:

Said Payee, or the holder hereof, may at any time and from time to time advance such sums as said Payee or holder may deem proper for the protection or preservation of said personal property. Such

advancements shall be added to the principal obligation, bear like interest and be secured in like manner.

The holder hereof, may at any time call upon the undersigned for such additional security as it or they may deem proper, and on failure of the undersigned to respond forthwith to such calls, this obligation shall, at the option of the holder hereof, immediately thereupon become due and payable.

Should this note, or any part hereof, or the interest hereon, remain due or unpaid, or should additional security not be furnished when called for, as above provided, the undersigned irrevocably empowers the holder hereof to collect, or to sell and dispose of, at either public or private sale, at the best price offered, the above mentioned pledged property, or any additions thereto or any substitute therefor, either as an entirety or in such parcels as the holder hereof may determine, without any previous demand, advertisement or notice,—such demand, advertisement or notice being hereby expressly waived, and upon such sale said JANSS INVESTMENT CORPORATION or the holder hereof, or any other person whomsoever, may become the purchaser of the whole or any part of said pledged property, or any additions thereto or any substitute therefor, discharged from any right of redemption, and after deducting all legal or other costs, expenses of collection, sale and delivery, including reasonable attorney's fees for advice or collection, or in the sale and delivery, may apply the residue of the proceeds of such sale or sales to the payment of any

advances made, and the interest thereon, and of the principal and interest then due, and pay the balance, if any, to the undersigned, upon demand; and the undersigned agree to pay the holder hereof any shortage or deficiency, upon demand.

Nothing herein shall impair the right to use any legal or equitable remedy for the collection hereof, or to foreclose said pledge by proceedings in any court of competent jurisdiction. In case of any proceedings in probate, or in bankruptcy, or of interpleader, or of intervention, or of receivership, or of adverse claims, whereby costs and attorney's fees are proper to be incurred, or of foreclosure or other proceedings to enforce payment, or to protect any right of the holder, then costs, expenses and attorney's fees of the holder hereof, shall be added to the principal obligation, bear like interest and be secured in like manner.

In case of any adverse claims in respect of said pledged property or any portion thereof, the undersigned promises and agrees to hold harmless and to indemnify said JANSS INVESTMENT CORPORATION, its successors or assigns, from and against any loss, damages, expenses, costs and attorney's fees incurred in or about advising, defending or protecting the interests hereby created.

Upon the payment or performance of the above obligations, according to the terms thereof, the pledged property shall be returned to the undersigned.

PRESENTMENT, DEMAND, PROTEST, NOTICE OF PROTEST AND DILIGENCE are

hereby WAIVED by each party in whatever manner bound on this obligation.

Signature STANLEY S. ANDERSON
Signature MARGUERITE S. ANDERSON
Address: 1341 Benedict Canyon Road
Beverly Hills, California
(Paid by Journal Entry 5/22/30 L. L. Fuller)
M 19-R [218]

[Printer's Note]: As the printed form on the reverse of the preceding exhibit has not been filled in, the same is not set forth in printed record.

$15,000.00

Los Angeles, California, October 29, 1929

On or before One (1) Year after date, FOR VALUE RECEIVED We promise to pay to JANSS INVESTMENT CORPORATION a corporation, or order, at its office in the City of Los Angeles, California, the sum of Fifteen Thousand and no/100 Dollars, with interest thereon from date hereof until paid, at the rate of Seven per cent. per annum, payable Qtly; Principal and interest payable in gold coin of the United States. Should interest not be so paid, it shall become part of the principal and thereafter bear like interest. Should default be made in payment of any installment of interest or principal when due the unpaid balance of principal and interest shall, at the option of the holder of this note, become immediately due. Should an attorney be employed to collect, or should suit be commenced to enforce the payment of this note, the undersigned agrees to pay a reasonable sum additional as attorney's fees.

AS SECURITY for the payment of this note and

the interest hereon, and any expenses, including attorney's fees, which may accrue hereon, and any extension or renewal hereof, the undersigned has deposited with, and hereby pledges and assigns to, said Janss Investment Corporation, the following personal property of which the undersigned is the owner, the same being deposited at the sole risk and expense of the undersigned, namely:

Assignment of equities in Syndicates known as Anderson-Janss Syndicates Numbers 1-2-3 the market value of which is now $.................., on the following terms and conditions, namely:

Said Payee, or the holder hereof, may at any time and from time to time advance such sums as said Payee or holder may deem proper for the protection or preservation of said personal property. Such advancements shall be added to the principal obligations, bear like interest and be secured in like manner.

The holder hereof, may at any time call upon the undersigned for such additional security as it or they may deem proper, and on failure of the undersigned to respond forthwith to such calls, this obligation shall, at the option of the holder hereof, immediately thereupon become due and payable.

Should this note, or any part hereof, or the interest hereon, remain due or unpaid, or should additional security not be furnished when called for, as above provided, the undersigned irrevocably empowers the holder hereof to collect, or to sell and dispose of, at either public or private sale, at the best price offered, the above mentioned pledged property, or any additions thereto or any substitute

therefor, either as an entirety or in such parcels as the holder hereof may determine, without any previous demand, advertisement or notice,—such demand, advertisement or notice being hereby expressly waived, and upon such sale said JANSS INVESTMENT CORPORATION or the holder hereof, or any other person whomsoever, may become the purchaser of the whole or any part of said pledged property, or any additions thereto or any substitute therefor, discharged from any right of redemption, and after deducting all legal or other costs, expenses of collection, sale and delivery, including reasonable attorney's fees for advice or collection, or in the sale and delivery, may apply the residue of the proceeds of such sale or sales to the payment of any advances made, and the interest thereon, and of the principal and interest then due, and pay the balance, if any, to the undersigned, upon demand; and the undersigned agree to pay the holder hereof any shortage or deficiency, upon demand.

Nothing herein shall impair the right to use any legal or equitable remedy for the collection hereof, or to foreclose said pledge by proceedings in any court of competent jurisdiction. In case of any proceedings in probate, or in bankruptcy, or of interpleader, or of intervention, or of receivership, or of adverse claims, whereby costs and attorney's fees are proper to be incurred, or of foreclosure or other proceedings to enforce payment, or to protect any right of the holder, then costs, expenses and attorney's fees of the holder hereof, shall be added to the principal obligation, bear like interest and be secured in like manner.

In case of any adverse claims in respect of said pledged property or any portion thereof, the undersigned promises and agrees to hold harmless and to indemnify said JANSS INVESTMENT CORPORATION, its successors or assigns, from and against any loss, damages, expenses, costs and attorney's fees incurred in or about advising, defending or protecting the interests hereby created.

Upon the payment or performance of the above obligations, according to the terms thereof, the pledged property shall be returned to the undersigned.

PRESENTMENT, DEMAND, PROTEST, NOTICE OF PROTEST AND DILIGENCE are hereby WAIVED by each party in whatever manner bound on this obligation.

Signature STANLEY S. ANDERSON

Signature MARGUERITE S. ANDERSON

(Paid by Journal entry 5/22/30 L. L. Fuller.)

(OK IY) 19T [220]

[Printer's Note]: As the printed form on the reverse of the preceding exhibit has not been filled in, the same is not set forth in printed record.

$11,250.00

Los Angeles California, November 25, 1929

On demand after date, FOR VALUE RECEIVED I promise to pay to JANSS INVESTMENT CORPORATION a corporation, or order, at its office in the City of Los Angeles, California, the sum of Eleven Thousand Two Hundred Fifty and no/100 Dollars, Principal and interest payable in gold coin of the United States. Should interest not

be so paid, it shall become part of the principal and thereafter bear like interest. Should default be made in payment of any installment of interest or principal when due the unpaid balance of principal and interest shall, at the option of the holder of this note, become immediately due. Should an attorney be employed to collect, or should suit be commenced to enforce the payment of this note, the undersigned agree to pay a reasonable sum additional as attorney's fees.

AS SECURITY for the payment of this note and the interest hereon, and any expenses, including attorney's fees, which may accrue hereon, and any extension or renewal hereof, the undersigned has deposited with, and hereby pledges and assigns to, said Janss Investment Corporation the following personal property of which the undersigned is the owner, the same being deposited at the sole risk and expense of the undersigned, namely:

Secured by assignment of equity in Anderson-Janss Syndicates No. 1-2-3 the market value of which is now $.............., on the following terms and conditions, namely:

Said Payee, or the holder hereof, may at any time and from time to time advance such sums as said Payee or holder may deem proper for the protection or preservation of said personal property. Such advancements shall be added to the principal obligation, bear like interest and be secured in like manner.

The holder hereof, may at any time call upon the undersigned for such additional security as it or they may deem proper, and on failure of the undersigned

to respond forthwith to such calls, this obligation shall, at the option of the holder hereof, immediately thereupon become due and payable.

Should this note, or any part hereof, or the interest hereon, remain due or unpaid, or should additional security not be furnished when called for, as above provided, the undersigned irrevocably empowers the holder hereof to collect, or to sell and dispose of, at either public or private sale, at the best price offered, the above mentioned pledged property, or any additions thereto or any substitute therefor, either as an entirety or in such parcels as the holder hereof may determine, without any previous demand, advertisement or notice,—such demand, advertisement or notice being hereby expressly waived, and upon such sale said JANSS INVESTMENT CORPORATION or the holder hereof, or any other person whomsoever, may become the purchaser of the whole or any part of said pledged property, or any additions thereto or any substitute therefor, discharged from any right of redemption, and after deducting all legal or other costs, expenses of collection, sale and delivery, including reasonable attorney's fees for advice or collection, or in the sale and delivery, may apply the residue of the proceeds of such sale or sales to the payment of any advances made, and the interest thereon, and of the principal and interest then due, and pay the balance, if any, to the undersigned, upon demand; and the undersigned agree to pay the holder hereof any shortage or deficiency, upon demand.

Nothing herein shall impair the right to use any legal or equitable remedy for the collection hereof, or to foreclose said pledge by proceedings in any

court of competent jurisdiction. In case of any proceedings in probate, or in bankruptcy, or of interpleader, or of intervention, or of receivership, or of adverse claims, whereby costs and attorney's fees are proper to be incurred, or of foreclosure or other proceedings to enforce payment, or to protect any right of the holder, then costs, expenses and attorney's fees of the holder hereof, shall be added to the principal obligation, bear like interest and be secured in like manner.

In case of any adverse claims in respect of said pledged property or any portion thereof, the undersigned promises and agrees to hold harmless and to indemnify said JANSS INVESTMENT CORPORATION, its successors or assigns, from and against any loss, damages, expenses, costs and attorney's fees incurred in or about advising, defending or protecting the interests hereby created.

Upon the payment or performance of the above obligations, according to the terms thereof, the pledged property shall be returned to the undersigned.

PRESENTMENT, DEMAND, PROTEST, NOTICE OF PROTEST AND DILIGENCE are hereby WAIVED by each party in whatever manner bound on this obligation.

Signature STANLEY S. ANDERSON
Signature MARGUERITE S. ANDERSON

Address ....

(Paid Feb. 21, 1930. Janss Inv. Corp, TR.)

(OK IY) 19V [222]

[Printer's Note]: As the printed form on the reverse of the preceding exhibit has not been filled in, the same is not set forth in printed record.

$20,000.00

Los Angeles, California, March 10, 1930

On demand after date, FOR VALUE RECEIVED I promise to pay to JANSS INVESTMENT CORPORATION a corporation, or order, at its office in the City of Los Angeles, California, the sum of Twenty Thousand and no/100 Dollars, with interest thereon from date until paid, at the rate of seven per cent. per annum, payable Qtly.; Principal and interest payable in gold coin of the United States. Should interest not be so paid, it shall become part of the principal and thereafter bear like interest. Should default be made in payment of any installment of interest or principal when due the unpaid balance of principal and interest shall, at the option of the holder of this note, become immediately due. Should an attorney be employed to collect, or should suit be commenced to enforce the payment of this note, the undersigned agree to pay a reasonable sum additional as attorney's fees.

AS SECURITY for the payment of this note and the interest hereon, and any expenses, including attorney's fees, which may accrue hereon, and any extension or renewal hereof, the undersigned ha...... deposited with, and hereby pledge...... and assign...... to, said.. the following personal property of which the undersigned.................. the owner......, the same being deposited at the sole risk and expense of the undersigned, namely:

Secured by assignment of equities in syndicates known as Anderson-Janss Syndicate Nos. 1-2 & 3

the market value of which is now $.........................., on the following terms and conditions, namely:

Said Payee, or the holder hereof, may at any time and from time to time advance such sums as said Payee or holder may deem proper for the protection or preservation of said personal property. Such advancements shall be added to the principal obligation, bear like interest and be secured in like manner.

The holder hereof, may at any time call upon the undersigned for such additional security as it or they may deem proper, and on failure of the undersigned to respond forthwith to such calls, this obligation shall, at the option of the holder hereof, immediately thereupon become due and payable.

Should this note, or any part hereof, or the interest hereon, remain due or unpaid, or should additional security not be furnished when called for, as above provided, the undersigned irrevocably empowers the holder hereof to collect, or to sell and dispose of, at either public or private sale, at the best price offered, the above mentioned pledged property, or any additions thereto or any substitute therefor, either as an entirety or in such parcels as the holder hereof may determine, without any previous demand, advertisement or notice,—such demand, advertisement or notice being hereby expressly waived; and upon such sale said..or the holder hereof, or any other person whomsoever, may become the purchaser of the whole or any part of said pledged property, or any additions thereto or any substitute therefor, discharged from any right of redemption, and

after deducting all legal or other costs, expenses of collection, sale and delivery, including reasonable attorney's fees for advice or collection, or in the sale and delivery, may apply the residue of the proceeds of such sale or sales to the payment of any advances made, and the interest thereon, and of the principal and interest then due, and pay the balance, if any, to the undersigned, upon demand, and the undersigned agree to pay the holder hereof any shortage or deficiency, upon demand.

Nothing herein shall impair the right to use any legal or equitable remedy for the collection hereof, or to foreclose said pledge by proceedings in any court of competent jurisdiction. In case of any proceedings in probate, or in bankruptcy, or of interpleader, or of intervention, or of receivership, or of adverse claims, whereby costs and attorney's fees are proper to be incurred, or of foreclosure or other proceedings to enforce payment, or to protect any right of the holder, then costs, expenses and attorney's fees of the holder hereof, shall be added to the principal obligation, bear like interest and be secured in like manner.

In case of any adverse claims in respect of said pledged property or any portion thereof, the undersigned promises and agrees to hold harmless and to indemnify said.., its successors or assigns, from and against any loss, damages, expenses, costs and attorney's fees incurred in or about advising, defending or protecting the interests hereby created.

Upon the payment or performance of the above obligations, according to the terms thereof, the pledged property shall be returned to the undersigned.

PRESENTMENT, DEMAND, PROTEST, NOTICE OF PROTEST AND DILIGENCE are hereby WAIVED by each party in whatever manner bound on this obligation.

Signature STANLEY S. ANDERSON
Signature MARGUERITE S. ANDERSON

Address ....

(Paid by Journal Entry 5/22/30 L. L. Fuller)

(OK IY) 19X [224]

[Printer's Note]: As the printed form on the reverse of the preceding exhibit has not been filled in, the same is not set forth in printed record.

$23,000.00

Los Angeles, California, May 19, 1930

On demand FOR VALUE RECEIVED I promise to pay to JANSS INVESTMENT CORPORATION, a corporation, or order, at its office in the City of Los Angeles, California, the sum of Twenty-three Thousand ($23,000.00) Dollars, with interest thereon from date until paid, at the rate of 7% per cent. per annum, payable quarterly; Principal and interest payable in gold coin of the United States. Should interest not be so paid, it shall become part of the principal and thereafter bear like interest. Should default be made in payment of any installment of interest or principal when due the unpaid balance of principal and interest shall, at the option of the holder of this note, become immediately due.

Should an attorney be employed to collect, or should suit be commenced to enforce the payment of this note, the undersigned agrees to pay a reasonable sum additional as attorney's fees.

AS SECURITY for the payment of this note and the interest hereon, and any expenses, including attorney's fees, which may accrue hereon, and any extension or renewal hereof, the undersigned has deposited with, and hereby pledges and assigns to, said Janss Investment Corporation the following personal property of which the undersigned is the owner, the same being deposited at the sole risk and expense of the undersigned, namely:

Equities in Syndicates known as Anderson-Janss Syndicate No. 1, 2 and 3, or Tracts 7514, 8235, 10021 and Blocks 1 to 16, Tract 7803, the market value of which is now $.................., on the following terms and conditions, namely:

Said Payee, or the holder hereof, may at any time and from time to time advance such sums as said Payee or holder may deem proper for the protection or preservation of said personal property. Such advancements shall be added to the principal obligation, bear like interest and be secured in like manner.

The holder hereof, may at any time call upon the undersigned for such additional security as it or they may deem proper, and on failure of the undersigned to respond forthwith to such calls, this obligation shall, at the option of the holder hereof, immediately thereupon become due and payable.

Should this note, or any part hereof, or the interest hereon, remain due or unpaid, or should addi-

tional security not be furnished when called for, as above provided, the undersigned irrevocably empowers the holder hereof to collect, or to sell and dispose of, at either public or private sale, at the best price offered, the above mentioned pledged property, or any additions thereto or any substitute therefor, either as an entirety or in such parcels as the holder hereof may determine, without any previous demand, advertisement or notice,—such demand, advertisement or notice being hereby expressly waived, and upon such sale said JANSS INVESTMENT CORPORATION or the holder hereof, or any other person whomsoever, may become the purchaser of the whole or any part of said pledged property, or any additions thereto or any substitute therefor, discharged from any right of redemption, and after deducting all legal or other costs, expenses of collection, sale and delivery, including reasonable attorney's fees for advice or collection, or in the sale and delivery, may apply the residue of the proceeds of such sale or sales to the payment of any advances made, and the interest thereon, and of the principal and interest then due, and pay the balance, if any, to the undersigned, upon demand; and the undersigned agree to pay the holder hereof any shortage or deficiency, upon demand.

Nothing herein shall impair the right to use any legal or equitable remedy for the collection hereof, or to foreclose said pledge by proceedings in any court of competent jurisdiction. In case of any proceedings in probate, or in bankruptcy, or of interpleader, or of intervention, or of receivership, or of

adverse claims, whereby costs and attorney's fees are proper to be incurred, or of foreclosure or other proceedings to enforce payment, or to protect any right of the holder, then costs, expenses and attorney's fees of the holder hereof, shall be added to the principal obligation, bear like interest and be secured in like manner.

In case of any adverse claims in respect of said pledged property or any portion thereof, the undersigned promises and agrees to hold harmless and to indemnify said JANSS INVESTMENT CORPORATION, its successors or assigns, from and against any loss, damages, expenses, costs and attorney's fees incurred in or about advising, defending or protecting the interests hereby created.

Upon the payment or performance of the above obligations, according to the terms thereof, the pledged property shall be returned to the undersigned.

PRESENTMENT, DEMAND, PROTEST, NOTICE OF PROTEST AND DILIGENCE are hereby WAIVED by each party in whatever manner bound on this obligation.

Signature STANLEY S. ANDERSON
Signature MARGUERITE S. ANDERSON

Address ....

(Paid Mar 23, 31 Janss Investment Corp. L. L. Fuller)

(OK) 19Z [226]

[Printer's Note]: As the printed form on the reverse of the preceding exhibit has not been filled in, the same is not set forth in printed record.

$2,730.72

Los Angeles, California, December 1, 1930

On or before Six Months after date, FOR VALUE RECEIVED I promise to pay to JANSS INVESTMENT CORPORATION a corporation, or order, at its office in the City of Los Angeles, California, the sum of Two Thousand Seven Hundred Thirty and 72/100 Dollars, with interest thereon from date hereof until paid, at the rate of seven per cent. per annum, payable at maturity; Principal and interest payable in gold coin of the United States. Should interest not be so paid, it shall become part of the principal and thereafter bear like interest. Should default be made in payment of any installment of interest or principal when due the unpaid balance of principal and interest shall, at the option of the holder of this note, become immediately due. Should an attorney be employed to collect, or should suit be commenced to enforce the payment of this note, the undersigned agrees to pay a reasonable sum additional as attorney's fees.

AS SECURITY for the payment of this note and the interest hereon, and any expenses, including attorney's fees, which may accrue hereon, and any extension or renewal hereof, the undersigned has deposited with, and hereby pledges and assigns to, said Janss Investment Corporation the following personal property of which the undersigned............the owner, the same being deposited at the sole risk and expense of the undersigned, namely:

Secured by assignment of all right and title to equity in Anderson-Janss Syndicates Numbers 1,

2 and 3, the market value of which is now $..............., on the following terms and conditions, namely:

Said Payee, or the holder hereof, may at any time and from time to time advance such sums as said Payee or holder may deem proper for the protection or preservation of said personal property. Such advancements shall be added to the principal obligation, bear like interest and be secured in like manner.

The holder hereof, may at any time call upon the undersigned for such additional security as it or they may deem proper, and on failure of the undersigned to respond forthwith to such calls, this obligation shall, at the option of the holder hereof, immediately thereupon become due and payable.

Should this note, or any part hereof, or the interest hereon, remain due or unpaid, or should additional security not be furnished when called for, as above provided, the undersigned irrevocably empowers the holder hereof to collect, or to sell and dispose of, at either public or private sale, at the best price offered, the above mentioned pledged property, or any additions thereto or any substitute therefor, either as an entirety or in such parcels as the holder hereof may determine, without any previous demand, advertisement or notice,—such demand, advertisement or notice being hereby expressly waived, and upon such sale said JANSS INVESTMENT CORPORATION or the holder hereof, or any other person whomsoever, may become the pur-

chaser of the whole or any part of said pledged property, or any additions thereto or any substitute therefor, discharged from any right of redemption, and after deducting all legal or other costs, expenses of collection, sale and delivery, including reasonable attorney's fees for advice or collection, or in the sale and delivery, may apply the residue of the proceeds of such sale or sales to the payment of any advances made, and the interest thereon, and of the principal and interest then due, and pay the balance, if any, to the undersigned, upon demand; and the undersigned agree to pay the holder hereof any shortage or deficiency, upon demand.

Nothing herein shall impair the right to use any legal or equitable remedy for the collection hereof, or to foreclose said pledge by proceedings in any court of competent jurisdiction. In case of any proceedings in probate, or in bankruptcy, or of interpleader, or of intervention, or of receivership, or of adverse claims, whereby costs and attorney's fees are proper to be incurred, or of foreclosure or other proceedings to enforce payment, or to protect any right of the holder, then costs, expenses and attorney's fees of the holder hereof, shall be added to the principal obligation, bear like interest and be secured in like manner.

In case of any adverse claims in respect of said pledged property or any portion thereof, the undersigned promises and agrees to hold harmless and to indemnify said JANSS INVESTMENT CORPORATION, its successors or assigns, from and against any loss, damages, expenses, costs and attorney's fees incurred in or about advising, defending or protecting the interests hereby created.

Upon the payment or performance of the above obligations, according to the terms thereof, the pledged property shall be returned to the undersigned.

PRESENTMENT, DEMAND, PROTEST, NOTICE OF PROTEST AND DILIGENCE are hereby WAIVED by each party in whatever manner bound on this obligation.

Signature STANLEY S. ANDERSON

Signature MARGUERITE S. ANDERSON

Address:: 1341 Benedict Canyon Road.

(Paid Mar 23 1931 Janss Investment Corp. L. L. Fuller)

19bb [228]

[Printer's Note]: As the printed form on the reverse of the preceding exhibit has not been filled in, the same is not set forth in printed record.

$8,119.28

Los Angeles, California, May 31, 1930

On demand FOR VALUE RECEIVED I promise to pay to JANSS INVESTMENT CORPORATION a corporation, or order, at its office in the City of Los Angeles, California, the sum of Eighty-one Hundred Nineteen and 28/100 Dollars, with interest thereon from date until paid, at the rate of seven per cent. per annum, payable at maturity; Principal and interest payable in gold coin of the United States. Should interest not be so paid, it shall become part of the principal and thereafter bear like interest. Should default be made in payment of any installment of interest or principal when due the unpaid balance of principal and interest shall, at the option of the holder of this note,

become immediately due. Should an attorney be employed to collect, or should suit be commenced to enforce the payment of this note, the undersigned agree to pay a reasonable sum additional as attorney's fees.

AS SECURITY for the payment of this note and the interest hereon, and any expenses, including attorney's fees, which may accrue hereon, and any extension or renewal hereof, the undersigned ha......... deposited with, and hereby pledge and assign to, said Janss Investment Corporation the following personal property of which the undersigned.................... the owner......, the same being deposited at the sole risk and expense of the undersigned, namely:

Secured by equity in syndicate known as Anderson-Janss Syndicate No. 1, 2 and 3, or Tract 7514, 8235, 10021 and Blocks 1 to 16, Tract 7803, the market value of which is now $...................., on the following terms and conditions, namely:

Said Payee, or the holder hereof, may at any time and from time to time advance such sums as said Payee or holder may deem proper for the protection or preservation of said personal property. Such advancements shall be added to the principal obligations, bear like interest and be secured in like manner.

The holder hereof, may at any time call upon the undersigned for such additional security as it or they may deem proper, and on failure of the undersigned to respond forthwith to such calls, this obligation shall, at the option of the holder hereof, immediately thereupon become due and payable.

Should this note, or any part hereof, or the interest hereon, remain due or unpaid, or should additional security not be furnished when called for, as above provided, the undersigned irrevocably empowers the holder hereof to collect, or to sell and dispose of, at either public or private sale, at the best price offered, the above mentioned pledged property, or any additions thereto or any substitute therefor, either as an entirety or in such parcels as the holder hereof may determine, without any previous demand, advertisement or notice,—such demand, advertisement or notice being hereby expressly waived, and upon such sale said JANSS INVESTMENT CORPORATION or the holder hereof, or any other person whomsoever, may become the purchaser of the whole or any part of said pledged property, or any additions thereto or any substitute therefor, discharged from any right of redemption, and after deducting all legal or other costs, expenses of collection, sale and delivery, including reasonable attorney's fees for advice or collection, or in the sale and delivery, may apply the residue of the proceeds of such sale or sales to the payment of any advances made, and the interest thereon, and of the principal and interest then due, and pay the balance, if any, to the undersigned, upon demand; and the undersigned agree to pay the holder hereof any shortage or deficiency, upon demand.

Nothing herein shall impair the right to use any legal or equitable remedy for the collection hereof, or to foreclose said pledge by proceedings in any court of competent jurisdiction. In case of any pro-

ceedings in probate, or in bankruptcy, or of interpleader, or of intervention, or of receivership, or of adverse claims, whereby costs and attorney's fees are proper to be incurred, or of foreclosure or other proceedings to enforce payment, or to protect any right of the holder, then costs, expenses and attorney's fees of the holder hereof, shall be added to the principal obligation, bear like interest and be secured in like manner.

In case of any adverse claims in respect of said pledged property or any portion thereof, the undersigned promises and agrees to hold harmless and to indemnify said JANSS INVESTMENT CORPORATION, its successors or assigns, from and against any loss, damages, expenses, costs and attorney's fees incurred in or about advising, defending or protecting the interests hereby created.

Upon the payment or performance of the above obligations, according to the terms thereof, the pledged property shall be returned to the undersigned.

PRESENTMENT, DEMAND, PROTEST, NOTICE OF PROTEST AND DILIGENCE are hereby WAIVED by each party in whatever manner bound on this obligation.

Signature STANLEY S. ANDERSON

Signature MARGUERITE S. ANDERSON

Address: 1341 Benedict Canyon Rd.

(Paid Mar 24 1931 Janss Investment Corp.)

[Printer's Note]: As the printed form on the reverse of the preceding exhibit has not been filled in, the same is not set forth in printed record.

$40,000.00

Los Angeles, California, May 16, 1930

Sixty days after date, FOR VALUE RECEIVED I promise to pay to JANSS INVESTMENT CORPORATION, a corporation, or order, at its office in the City of Los Angeles, California, the sum of Forty Thousand ($40,000.00) Dollars, with interest thereon from date until paid, at the rate of 7% per cent. per annum, payable at maturity; Principal and interest payable in gold coin of the United States. Should interest not be so paid, it shall become part of the principal and thereafter bear like interest. Should default be made in payment of any installment of interest or principal when due the unpaid balance of principal and interest shall, at the option of the holder of this note, become immediately due. Should an attorney be employed to collect, or should suit be commenced to enforce the payment of this note, the undersigned agrees to pay a reasonable sum additional as attorney's fees.

AS SECURITY for the payment of this note and the interest hereon, and any expenses, including attorney's fees, which may accrue hereon, and any extension or renewal hereof, the undersigned has deposited with, and hereby pledges and assigns to, said Janss Investment Corporation the following personal property of which the undersigned is the owner, the same being deposited at the sole risk and expense of the undersigned, namely:

Equities in Syndicates known as Anderson-Janss Syndicate No. 1, 2 and 3, or Tracts 7514, 8235,

10021 and Blocks 1 to 16, Tract 7803, the market value of which is now $................., on the following terms and conditions, namely:

Said Payee, or the holder hereof, may at any time and from time to time advance such sums as said Payee or holder may deem proper for the protection or preservation of said personal property. Such advancements shall be added to the principal obligation, bear like interest and be secured in like manner.

The holder hereof, may at any time call upon the undersigned for such additional security as it or they may deem proper, and on failure of the undersigned to respond forthwith to such calls, this obligation shall, at the option of the holder hereof, immediately thereupon become due and payable.

Should this note, or any part hereof, or the interest hereon, remain due or unpaid, or should additional security not be furnished when called for, as above provided, the undersigned irrevocably empowers the holder hereof to collect, or to sell and dispose of, at either public or private sale, at the best price offered, the above mentioned pledged property, or any additions thereto or any substitute therefor, either as an entirety or in such parcels as the holder hereof may determine, without any previous demand, advertisement or notice,—such demand, advertisement or notice being hereby expressly waived, and upon such sale said JANSS INVESTMENT CORPORATION or the holder hereof, or any other person whomsoever, may become the purchaser of the whole or any part of said pledged property, or any additions thereto or any substitute

therefor, discharged from any right of redemption, and after deducting all legal or other costs, expenses of collection, sale and delivery, including reasonable attorney's fees for advice or collection, or in the sale and delivery, may apply the residue of the proceeds of such sale or sales to the payment of any advances made, and the interest thereon, and of the principal and interest then due, and pay the balance, if any, to the undersigned, upon demand; and the undersigned agrees to pay the holder hereof any shortage or deficiency, upon demand.

Nothing herein shall impair the right to use any legal or equitable remedy for the collection hereof, or to foreclose said pledge by proceedings in any court of competent jurisdiction. In case of any proceedings in probate, or in bankruptcy, or of interpleader, or of intervention, or of receivership, or of adverse claims, whereby costs and attorney's fees are proper to be incurred, or of foreclosure or other proceedings to enforce payment, or to protect any right of the holder, then costs, expenses and attorney's fees of the holder hereof, shall be added to the principal obligation, bear like interest and be secured in like manner.

In case of any adverse claims in respect of said pledged property or any portion thereof, the undersigned promises and agrees to hold harmless and to indemnify said JANSS INVESTMENT CORPORATION, its successors or assigns, from and against any loss, damages, expenses, costs and attorney's fees incurred in or about advising, defending or protecting the interests hereby created.

Upon the payment or performance of the above

obligations, according to the terms thereof, the pledged property shall be returned to the undersigned.

PRESENTMENT, DEMAND, PROTEST, NOTICE OF PROTEST AND DILIGENCE are hereby WAIVED by each party in whatever manner bound on this obligation.

Signature STANLEY S. ANDERSON

Signature MARGUERITE S. ANDERSON

Address ....

(Paid by Syndicate liquidation Janss Inv Corp By L. L. Fuller)

(OK) 19FF [232]

[Printer's Note]: As the printed form on the reverse of the preceding exhibit has not been filled in, the same is not set forth in printed record.

PETITIONER'S EXHIBIT 20

[Received Mar 1, 1926, Janss Inv. Co.]

March 11, 1926

Janss Investment Company
404 Metropolitan Bldg.
Los Angeles, California.

Gentlemen:—

We hand you herewith note for $20,000.00, dated March 11, 1926, due on or before six months with interest at rate of 7%, payable quarterly, and signed by Stanley S. Anderson and Marguerite S. Anderson.

As security for this loan, we hereby assign, transfer and set over to you.

1. All our right, title and interest in the Christie-Anderson-Janss Syndicate and the Christie

Film Syndicate covering Tract 7514 and Units 1 and 2 in Tract 7803; and Tract 8235.

2. All our right, title and interest in and to the profits or commissions due us or to be received by us from the Fox Hills Realty Company:

Yours very truly,
STANLEY S. ANDERSON
MARGUERITE S. ANDERSON

Accepted and approved:
JANSS INVESTMENT COMPANY,
By...
Vice President. [234]

Frank M. McDonnell E. P. Adams
Certified Public Accountant
Telephone VA 4452
ADAMS & McDONNELL
Public Accountants
Audits - Systems - Investigations
Tax Consultants - Tax Service
Suite 601 Central Building
Los Angeles
April 20th, 1926

JANSS INVESTMENT COMPANY
404 Metropolitan Building
Los Angeles, California

Gentlemen:

I hand you herewith note for Eighty Thousand Dollars ($80,000.00) dated April 20th, 1926, due on or before two (2) years, with interest at the rate of seven per cent (7%), payable quarterly, signed

by Stanley S. Anderson and my wife, Marguerite S. Anderson.

As security for this loan, we hereby assign, transfer and set over to you:

1. All our right, title and interest in the Christie-Anderson-Janss Syndicate and the Christie Film Syndicate covering Tract 7514 and Units 1 and 2 in Tract 7803 and Tract 8235:
2. All our right, title and interest in and to the profits or commissions due us or to be received by us from the Fox Hills Realty Company:
3. Deed to an undivided one-fourth (1/4) interest in thirty seven (37) acres (plus) film site, from Charles H. Christie to ourselves:
4. Deed from ourselves to you for aforesaid one-fourth (1/4) interest, and upon demand I will have said Deed signed by my wife.

IT IS UNDERSTOOD that as a further consideration for the making of this loan to us, we agree that no disbursements of profits from the above mentioned Syndicates are to be made to us by the Janss Investment Company until our mortgage notes in favor of the Holmby Corporation given as part of the purchase price of the property covered by the above referred-to Syndicates, and the note for $30,000.00 dated August 13, 1925, have been paid in full.

Yours very truly
STANLEY S. ANDERSON
MARGUERITE S. ANDERSON

Accepted and approved:
JANSS INVESTMENT COMPANY

....

Vice President

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun 14, 1932. [235]

PETITIONER'S EXHIBIT 21

AGREEMENT.

This agreement made and entered into this 10th day of Sept. 1923, by and between CHARLES H. CHRISTIE, and STANLEY S. ANDERSON, both of Beverly Hills, California;

WITNESSETH:

WHEREAS said Christie is about to enter into an agreement with Janss Investment Company, a corporation, for the purchase from said corporation of approximately one hundred seven (107) acres of land hereinafter described, for a consideration of Three Hundred Twenty-one Thousand ($321,000) Dollars, one-third (1/3) of which amount is to be paid upon the consummation of said sale, and the balance within three years thereafter, and said Christie is desirous of selling to said Anderson and said Anderson is desirous of purchasing one-quarter of the interest acquired by said Christie in said land, all upon the terms and conditions as hereinafter set forth.

NOW, THEREFORE, be it agreed that said Christie does hereby agree to sell to said Anderson,

and said Anderson does hereby agree to purchase from said Christie an undivided one-quarter interest in the said tract of land hereinafter more fully described, for one-quarter the amount to-wit: Eighty Thousand Two Hundred Fifty ($80,250) dollars, of the purchase price of said land from said Janss Investment Company, a corporation to said Christie; and that immediately following the execution and delivery to said Christie of any instrument or instruments conveying or agreeing to convey said land to said Christie, said Christie will thereupon, and thereafter, as he shall receive the same, execute to said Anderson similar agreements or conveyances of an [236] undivided one-quarter interest in said land, subject to all of the terms as to payment and conditions and restrictions appurtenant to said land under which said Christie shall acquire the same from said corporation. Said land is situated in the County of Los Angeles, State of California, and described as follows: (as per map attached)
CHC WSH

A portion of the Rancho San Jose De Buenos Ayres, containing one Hundred and Seven (107) acres, more or less, more particularly described as follows:

Beginning at the intersection of the southeasterly line of Lot ten (10), Block thirteen (13), as per map of the Rancho San Jose De Buenos Ayres, recorded in Book 26, pages 19 to 25, Miscellaneous Records of Los Angeles County, with the northwesterly prolongation of the center line of Green field Avenue, as per

map of Tract No. 5609, Sheet No. 2, recorded in Book 60, pages 34, 35 and 36, of Maps, Records of Los Angeles County; thence northeasterly along said southeasterly line of Lot ten (10) and its northeasterly prolongation to the intersection of a line parallel with 100th Avenue and extending southeasterly from the southeasterly corner of Lot one (1), Block thirteen (13), said Rancho San Jose De Buenos Ayres; thence southeasterly along said parallel line with 100th Avenue, to the intersection with the southeasterly line of the most northerly fifty (50) foot roadway of Santa Monica Boulevard; thence southwesterly along said southerly line of Santa Monica Boulevard to the intersection of the said northwesterly prolongation of the center line of Greenfield Avenue; thence northwesterly along said northwesterly prolongation of the center line of Greenfield Avenue to the point of beginning. CHC WSH

IT IS FURTHER UNDERSTOOD AND AGREED, that said Christie shall have the privilege of selecting and having set apart to him or his assigns, in severalty, a portion of said land so held by said Christie and Anderson in common, as a site for a film studio for the use of himself or a corporation in which he may be interested, provided that said site shall be limited as to size and location so that a tract of said land one-half the size of said site so selected similar thereto as to desirability for like or commercial purposes shall be avail-

able to said Anderson; and that in the event of said selection by said Christie, said Anderson shall be privileged to select acreage equal to one-half the amount thereof and of similar character to be set apart to himself [237] in severalty. The parties hereto hereby agree to execute the necessary conveyances to each other to effectuate said partition.

Should the parties hereto be unable to agree as to said partial partition of said lands the same may be referred to arbiters to determine an equitable partial partition, as herein contemplated. Each party shall choose one of said arbiters, and the two thus chosen shall select a third. The decision of the majority of the said arbiters shall be binding upon the parties hereto.

IT IS FURTHER MUTUALLY AGREED that this agreement shall not be binding upon the parties hereto, unless coincidently with the making of said agreement with said Janss Investment Company for the purchase of said land, said Christie and Anderson shall enter into a further agreement with said Janss Investment Company for a purchase and subdivision of an adjoining tract consisting of approximately one hundred twenty and one-half (120½) acres to be disposed of jointly by said Janss Investment Company, Christie and Anderson, and in which said Christie and Anderson shall each have a one-quarter interest. If said hereinbefore referred to agreements with Janss Investment Company shall not have been entered into within 30 days from and after the date hereof, this agreement shall terminate and be of no further

binding effect upon the parties hereto. All payments of money and exchange or delivery of papers or instruments herein contemplated shall be made through escrow with a title guaranty company in Los Angeles to be selected by the parties hereto.

All the terms and conditions hereof are binding upon and shall inure to the benefit of the heirs, executors, administrators, successors or assigns of the parties hereto, and time is hereby expressly made of the essence hereof.

WITNESS the names of the parties hereto upon the day and year first hereinbefore written. [238]

C. H. CHRISTIE,
By Fred L. Porter,
His attorney in Fact.

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun 14, 1932. [239]

PETITIONER'S EXHIBIT 22.

DEED

RODEO LAND & WATER COMPANY, a corporation organized under the laws of the State of California, having its principal place of business in the city of Los Angeles, in said State, party of the first part, in consideration of the sum of Ten Dollars ($10.00), does hereby grant, sell and convey to STANLEY S. ANDERSON, of the County of Los Angeles, State of California, party of the second part that certain real property situated in the

County of Los Angeles, State of California, and described as follows, to wit:

Lot One (1) in Block Three (3) of Beverly as designated and shown on map of said Beverly recorded in Book 11, page 94 of Maps, in the office of the County Recorder of said County.

This conveyance is made subject to the lien of taxes for the fiscal year 1915-1916.

PROVIDED, HOWEVER, that this conveyance is made and accepted on each of the following conditions, which are hereby made covenants running with the land, and which shall apply to and be binding upon the grantee, his heirs, devisees, executors, administrators and assigns, namely:

First. That the said grantee shall not, nor shall any of his heirs, assigns or successors in interest, nor those holding or claiming to hold thereunder, use or cause to be used, or allow, or authorize in any manner, directly or indirectly, said premises or any part thereof, to be used for the purpose of vending intoxicating liquors for drinking purposes; [240]

Second. That any building erected upon the premises hereby conveyed shall cost and be fairly worth not less than $5,000.00, and shall face on the front line of said premises, namely, on Beverly Drive.

Third. That all buildings and fences erected on the property herein conveyed shall be properly painted or stained.

Fourth. That the grantee, his heirs, devisees, ex-

ecutors, administrators, or assigns shall not themselves, nor shall they or either of them, permit any other person or corporation to prospect or drill for or develop or produce oil or other hydro-carbon products on the premises hereby conveyed.

Fifth. It is further covenanted and agreed that upon the breach of any of the foregoing conditions and restrictions prior to the first day of January, 1930, the title to said premises shall immediately, ipso facto, revert to and vest in said party of the first part, or its successors or assigns, or in any corporation to which it shall grant said reversion, and it or its successors in interest, or assigns of such corporation shall be entitled to the immediate possession thereof; but such reversion shall not affect the lien of any mortgage which in good faith may then be existing upon said property.

Sixth. Provided, further, that each of the restrictions, conditions and covenants herein contained as to the sale of intoxicating liquors, the building of houses, out-buildings and stables, and the developing or producing of oil and other like substances shall in all respects terminate and be of no further effect on and after the first day of January, 1930; and, provided further, that nothing herein contained shall be construed as in any manner prohibiting or preventing the party of the first part from constructing upon Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 21 of Block 75, of Beverly Hills, or of causing to be constructed thereon, or of selling said property for the purpose of having construct-

ed thereon, a hotel, nor as prohibiting or preventing the person or persons managing and operating said hotel from dispensing liquors with meals to the bona fide guests of such hotel.

IN WITNESS WHEREOF, the said party of the first part has hereunto caused its corporate name and seal to be affixed by its..................President, and ....Secretary, thereunto duly authorized, this Fourteenth day of April, 1916.

(Seal) RODEO LAND & WATER COMPANY,
By Burton R. Green,
President.
By F. B. Sutton,
Secretary. [241]

(U. S. Int. Rev. stamps in the amount of $2.00 affixed and cancelled) [241]

State of California,
County of Los Angeles.—ss.

On this 14th day of April A. D. 1916 before me, J. P. Auchenbach, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared Burton E. Green known to me to be the President and F. B. Sutton known to me to be the Secretary of the Rodeo Land & Water Company, the Corporation that executed the within instrument, known to me to be the persons who executed the within instrument, on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] J. P. AUCHENBACH,

Notary Public in and for said County and State.

DEED

Rodeo Land & Water Company
to
Stanley S. Anderson

Dated April 14th, 1916.

Lot 1, Block 3, Beverly.

Rodeo Land & Water Company, Los Angeles, Cal.

144

When recorded mail to Stanley S. Anderson, Beverly Hills, Calif.

Compared. Document, Ells. Book, Moore.

Recorded at request of Grantee Jul 26 1916 at 59 min. past 2 P. M. in Book 6271 page 288 of Deeds. Records Los Angeles Co., Cal. C. L. Logan, County Recorder, By E. E. Sallady, Deputy. Fee $1.30. 422

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun. 14, 1932. [242]

PETITIONER'S EXHIBIT 23.

GRANT DEED.

MARY MACBEAN and ISABELLA MACBEAN, unmarried women, of Los Angeles, Cali-

fornia, in consideration of Ten Dollars to them in hand paid, the receipt of which is hereby acknowledged, do hereby grant to STANLEY S. ANDERSON all that real property situated in the City of Beverly Hills, County of Los Angeles, State of California, described as follows:

Lot Twenty-three (23), in Block One (1) of Beverly, in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 11, page 94 of Maps, in the office of the County Recorder of said County.

To Have and to Hold to the said Grantee his heirs or assigns.

Witness our hands this 14th day of April-1916

ISABELLA MACBEAN
MARY MACBEAN

[U. S. Internal Revenue stamps in the amount of $1.00 affixed and cancelled.] [243]

State of California,
County of Los Angeles.—ss.

On this 14th day of April, 1916, before me, LeGrand Betts, a Notary Public in and for said County, personally appeared Mary Macbean and Isabella Macbean, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they executed the same.

Witness my hand and official seal.

[Notarial Seal] LE GRAND BETTS,
Notary Public in and for the County of Los Angeles, State of California.

GRANT DEED.

Individual

Mary Macbean and Isabella Macbean, to..............................

Dated April 14th, 1916.

Title Insurance and Trust Company,
Title Insurance Building,
Los Angeles, California

145 Order Number

Compared. Document. Tezmier, Book Ziegler.

When recorded please mail this deed to Stanley S. Anderson, Beverly Hills, Calif.

Recorded at request of grantee Jul 26, 1916, at 59 min. past 2 P. M. in Book 6307, page 132 of Deeds, Records Los Angeles Co., Cal. C. L. Logan, County Recorder, By G. W. Taylor, Deputy.
Fee, $........... 80/3 423 84

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun 14, 1932. [244]

PETITIONER'S EXHIBIT 24.

GRANT DEED

O. Franklin Thayer and Enona M. Thayer, his wife of Sherman Los Angeles Co., California *of Los Angeles County, California,* in consideration of Ten and no/100 ($10.00) Dollars, to..................in hand paid, the receipt of which is hereby acknowledged, do hereby Grant to Stanley S. Anderson of Beverly Hills California of Los Angeles County, California, all that real property situate in the County of Los

Angeles, State of California, described as follows:

Lot Twenty-four (24) in Block One (1) of Beverly as described and as designated and shown on Map of said Beverly, recorded in Book 11, Page 94 of Maps, in the office of the County Recorder of said County.

This deed is subject to the restrictions in deed between the Rodeo Land and Water Company, a corporation, and O. M. Newby, dated October 4, 1912, and recorded on October 22, 1912, in Book 5229, of Deeds, at page 144, in the office of the County Recorder of said Los Angeles County.

To Have and to Hold to the said grantee his heirs or assigns.

Witness our hands this 15th day of April 1916.

O. FRANKLIN THAYER
ENONA M. THAYER

(U. S. Internal Revenue stamps in the amount of $1.00 affixed and cancelled.) [245]

State of California,
County of Los Angeles.—ss.

On this 15th day of April 1916 before me G. G. Greenwood a Notary Public in and for said County, personally appeared O. Franklin Thayer and Enona M. Thayer, (his wife) known to me to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.

Witness my hand and official seal.

[Seal] G. G. GREENWOOD,
Notary Public, Los Angeles, County, California.

GRANT DEED

....

to

....

Dated, ...191.........

Title Guarantee and Trust Company

Capital, Fully Paid, $500,000

Surplus - - $350,000

Title Guarantee Building

Los Angeles, Cal.

Order No.

143

When recorded please mail this Deed to Stanley S. Anderson, Beverly Hills, Calif.

Compared. Document, Moore. Book, Ells.

Recorded at request of Grantee Jul 26 1916 at 59 min. past 2 P. M. in Book 6275 Page 241 of Deeds Records Los Angeles Co., Cal. C. L. Logan, County Recorder, By E. E. Sallady, Deputy.

Fee $............ 90/4 421

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun. 14, 1933. [246]

PETITIONER'S EXHIBIT 25.

GRANT DEED

MARY C. TAYLOR and G. L. TAYLOR, her husband, of the City of Houston, County of Harris,

State of Texas, in consideration of Ten ($10.00) Dollars to them in hand paid, the receipt of which is hereby acknowledged, do hereby Grant to STANLEY S. ANDERSON, of Beverly Hills, County of Los Angeles, State of California, all that real property situated in the City of Beverly Hills, County of Los Angeles, State of California, described as follows:

Lots one (1) and two (2) in Block two (2) of Beverly, as per Map recorded in Book 11, Page 94, of Maps, in the office of the County Recorder of said County.

SUBJECT TO the taxes for the fiscal year of 1916 and 1917;

SUBJECT ALSO to conditions, restrictions and reservations contained in the deeds from Rodeo Land and Water Company recorded in Book 3136, Page 151, of Deeds, affecting said Lot 1, and in Book 3160, Page 97, of Deeds, Records of said County, affecting said Lot 2.

To Have and to Hold to the said Grantee, his heirs or assigns subject to the matters above shown.

Witness their hands this 5th day of May, 1916.

MARY C. TAYLOR
G. L. TAYLOR

(U. S. Internal Revenue stamps in the amount of $2.50 affixed and cancelled.) [247]

State of Texas,
County of Harris.—ss.

On this 11th day of May 1916 before me, Otis K. Hamblin a Notary Public in and for said County, personally appeared Mary C. Taylor and G. L. Taylor known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they executed the same.

Witness my hand and Official Seal.

[Seal] OTIS K. HAMBLIN,
Notary Public in and for the County of Harris,
State of Texas.

My commission expires June 1st, 1917.
Otis K. Hamblin, Notary.

GRANT DEED

Individual

Mary C. Taylor et con
to
Stanley S. Anderson

Dated May 5th, 1916.

Title Insurance and Trust Company
Title Insurance Building
Los Angeles, California
Order Number 428964

146

Compared. Document, Moore. Book, Ells.

When recorded please mail this Deed to Stanley S. Anderson Beverly Hills, Cal.

Recorded at request of Grantee Jul 26 1916 at 59 min. past 2 P. M. in Book 6275 Page 242 of Deeds. Records Los Angeles Co., Cal. C. L. Logan, County Recorder, By G. W. Taylor, Deputy.

Fee $.......... 90/4 424

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun. 14, 1932. [248]

PETITIONER'S EXHIBIT 26.

Beverly Hills, Calif.
September 5, 1923.

Mrs. Marguerite S. Anderson,
Beverly Hills Hotel.

Confirming our conversation relative to the Janss Investment and Charlie Christie land deal.

Charlie and I agree to purchase from Janss 120.5 acres for $180,750 (for one-half interest, Janss retaining one-half), payable $60,250. cash in September and October, and notes for the balance of $120,500. On this deal I to-day paid $5000. on the September installment. I also entered into an agreement to purchase from Charles Christie a 1/4 interest in 107 acres, the total price of the acreage being $321,000. and our 1.4 will amount to $80,250. Under the agreement by which Charlie is buying this land from Janss he is to pay $107,000. cash and notes for $214,000. The cash payments are to be made in September and October and I to-day

paid $6250. which is 1.4 of the cash payment due in Sept.

I understand from you that you agree to these transactions and agree to payment of your proportion of the cash payments from any funds now held jointly by us, and that you assume liability for your proportion of future payments, such liability to attach to your separate funds as well as those held jointly by us.

It is the belief of Janss and Charlie that with the placing of this property on the market, the notes will be paid off from sales and we will not be called upon for cash to meet same.

Should you for any reason have occasion, in my absence or in case of any misunderstanding arising later, to secure further details relative to this, Dr. J. will give you same.

STANLEY S. ANDERSON. [249]

PETITIONER'S EXHIBIT 27.

THIS CERTIFIES, That a certain mortgage executed by Stanley S. Anderson and Marguerite S. Anderson his wife of Beverly Hills in the County of Los Angeles and State of California, to John Birkholz of Grand Forks, North Dakota, dated the 25th day of July 1916 upon the Lots one (1) and two (2), in Block two (2), Lots twenty-three (23) and twenty-four (24) in Block one (1) and Lot one (1) in Block three (3) of Beverly, as per map re-

corded in Book 11 Page 94 of Maps, in the office of the County Recorder of said County, and recorded in the office of the County Recorder in and for the County of Los Angeles and State of California, in Book 4023 of Mortgage deeds, on page 71 is Paid and Satisfied, with the notes accompanying the same, and I hereby authorize and require the Recorder for said County to discharge the same of record in his office.

Witness my hand and seal this 2nd day of April A. D. 1917.

[Seal] JOHN BIRKHOLZ

Signed, Sealed and Delivered in Presence of

A. L. SHIDELER

GENEVIEVE O'KEEFE

State of North Dakota,
County of Grand Forks.—ss.

On this 2nd day of April A. D. 1917 before me personally appeared John Birkholz to me known to be the identical person described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

Witness my hand and Seal this 2nd day of April A. D. 1917.

[Seal] A. L. SHIDELER

Notary Public North Dakota.

My Commission expires July 17, 1917.

[250]

BR

Loan No. 30899

SATISFACTION OF MORTGAGE

John Birkholz

to

Stanley S. Anderson

Office of Register of Deeds

....

County of..—ss.

I hereby certify that the within Satisfaction of Mortgage was filed in this office for record on the ....day of..A. D. 19......... at ....o'clock..................M., and was duly recorded in Book........................of......................................at page............

....

Register of Deeds

By..Deputy.

John Birkholz

Investment Banker

Grand Forks, N. Dak.

722

Compared. Document, Bond. Book, Elliott.

Please write the name and address on the back of each document you wish returned by mail.

First Natl. Bank Beverly Hill Cal

Recorded Apr 14 1920 34 min. past 10 A. M. in Book 657 at page 49 of Releases of Mtgs. Records, Los Angeles County, Cal. C. L. Logan, County Recorder.

Recorded at request of Mortgagor.

I certify that I have correctly transcribed this

document in above mentioned book. A. S. Nadeau, Copyist, County Recorder's Office, L. A. Co., Cal. #64
615 80/3 [251]

THIS MORTGAGE, made the twenty-fifth day of July 1916 By Stanley S. Anderson and Marguerite S. Anderson, his wife, of Beverly Hills, Los Angeles County, Cal. Mortgagors To John Birkholz, of Grand Forks, North Dakota, Mortgagee

Witnesseth: That the Mortgagors hereby mortgage to the Mortgagee all that certain real property situate in the City of Beverly Hills, County of Los Angeles, State of California, and particularly described as follows:

Lots One (1) and Two (2) in Block Two (2), Lots Twenty-three (23) and Twenty-four (24) in Block One (1), and Lot One (1) in Block Three (3) of Beverly, as per map recorded in Book 11 Page 94 of Maps, in the office of the County Recorder of said County [252] including all buildings and improvements thereon that may be erected thereon; together with all and singular the tenements, hereditaments and appurtenances, water rights, pipes, flumes and ditches thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; for the purpose of securing

First: The performance of the promises and obligations of this mortgage and payment of the indebtedness evidenced by one promissory note

(and any renewal or renewals thereof) in words and figures as follows:

$7000.00

Los Angeles, California, July 25, 1916

On, or before one year after date, for value received, we, Stanley S. Anderson and Marguerite S. Anderson promise to pay to John Birkholz or order, at Los Angeles, Cal. the sum of Seven Thousand ($7000.00) Dollars, with interest from date until paid, at the rate of Seven per cent per annum, payable semi-annually; should the interest not be so paid, it shall become part of the principal and thereafter bear like interest as the principal. Should default be made in the payment of any installment of interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Principal and interest payable in gold coin of the United States. This note is secured by a mortgage of even date herewith.

STANLEY S. ANDERSON
MARGUERITE S. ANDERSON

U. S. I. R. S. $1.40 Cancelled.

Second: The payment of attorney's fees for a reasonable sum to be fixed by the Court in any action brought to foreclose this mortgage, whether suit progress to judgment or not; also the payment of all costs and expenses of such suit and also such sums as said mortgagee may pay for searching the title to the mortgaged property subsequent to the date of the record of this mortgage or for survey-

ing said property, all of which said sums, including said attorney's fees, are hereby declared a lien upon said property and are secured hereby.

Third: The payment of all sums expended or advanced by the mortgagee for taxes, assessments, incumbrances, adverse claims, fire insurance, inspection, repair, cultivation, irrigation, protection or for any other purpose, provided for by the terms of this mortgage.

The mortgagors agree to pay, *a* soon as due, all taxes, assessments and incumbrances, which may be, or appear to be, liens upon said property or any part thereof (except taxes levied or assessed upon this mortgage or upon the money secured hereby), and to keep said buildings insured against fire, to the amount required by and in such insurance companies as may be satisfactory to the mortgagee and to assign the policies therefor to the mortgagee; and to promptly pay or settle (or cause to be removed by suit or otherwise) all adverse claims against said property.

In case said taxes, assessments, or incumbrances so agreed to be paid by the mortgagors be not so paid, or said buildings so insured and said policies so assigned, or said adverse claims so paid, settled or removed, then the mortgagee, being hereby made the sole judge of the legality thereof, may, without notice to the mortgagors, pay such taxes, assessments or incumbrances, obtain such policies of insurance in his own name as mortgagee and pay or settle any or all adverse claims or cause the same to be removed by suit or otherwise.

The mortgagors agree to keep said property in good condition and repair and to permit no waste thereof, and should said property, or any part thereof, require any inspection, repair cultivation, irrigation or protection, other than that provided by the mortgagors, then the mortgagee, being hereby made the sole judge of the necessity therefor, and without notice to the mortgagors, may enter, or cause entry to be made, upon said property, and inspect, repair, cultivate, irrigate or protect said property as he may deem necessary. All sums expended by the mortgagee in doing any of the things above authorized are secured hereby and shall be paid to the mortgagee by the mortgagors in said gold coin, on demand, together with interest from the date of payment, at the same rate of interest as is provided to be paid in the note hereinbefore set out. [253]

In the event of a loss under said policies of fire insurance, the amount collected thereon shall be credited first to the interest due, if any, upon said indebtedness, and the remainder, if any, upon the principal sum, and interest shall thereupon cease on the amount so credited on said principal sum.

The mortgagors promise to pay said note according to the terms and conditions thereof; and in case of default in the payment of the same, or of any installment of interest thereon when due, or if default be made in the payment of any other of the moneys herein agreed to be paid, or in the performance of any of the covenants or agreements herein

contained on the part of the mortgagors, the whole sum of money then secured by this mortgage shall become immediately due and payable at the option of the holder of said note and this mortgage may thereupon, or at any time during such default, be foreclosed, and the filing of the complaint in foreclosure shall be conclusive notice of the exercise of such option by the mortgagee.

It is also agreed that should this mortgage be foreclosed, then in the decree of foreclosure entered in such action, the property described therein may be ordered sold en masse—or as one lot or parcel, at the option of the mortgagee.

And Also, that the party of the second part may at any time, without notice, release portions of said mortgaged premises from the lien of this mortgage without affecting the personal liability of any person for the payment of the said indebtedness or the lien of this mortgage upon the remainder of the mortgaged premises for the full amount of said indebtedness then remaining unpaid.

The mortgagors hereby mortgage the property hereinbefore described, to secure the performance of every promise and agreement herein contained, direct or conditional, and to secure the repayment to the mortgagee of all sums paid, laid out or expended by the said mortgagee under the terms of this mortgage, and also to secure the attorneys' fees and costs provided for by this mortgage in case of a foreclosure thereof.

Every stipulation, agreement and appointment herein in favor of said mortgagee shall apply and

inure to the benefit of his heirs, executors, administrators or assigns.

Witness the hands and seals of said Mortgagors the day and year first above written.

[Seal] STANLEY S. ANDERSON

[Seal] MARGUERITE S. ANDERSON

Signed and Sealed in Presence of

....

State of California,
County of Los Angeles.—ss.

On this Twenty sixth day of July 1916, before me, Thomas Feron a Notary Public in and for said County, personally appeared Stanley S. Anderson and Marguerite S. Anderson his wife known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

WITNESS my hand and official seal the day and year in this Certificate first above written.

[Seal] THOMAS FERON,
Notary Public in and for the County of Los Angeles,
State of California. [254]

BR #30899

MORTGAGE

Individual

Stanley S. Anderson and Marguerite S. Anderson

to

John Birkholz.

Dated July 25, 1916. *190*

Title Insurance and Trust Company

Cor. Franklin and New High Streets

Los Angeles, California

Compared. Document, Ells. Book, Moore.

223

Order No. 433975

When recorded please mail this instrument to Stanley A. Anderson Beverly Hills Calif.

Recorded at request of Title Insurance & Tr. Co. Aug 2 1916 at 8:30 A. M. in Book 4023 Page 71 of Mortgages Records Los Angeles Co., Cal. C. L. Logan, County Recorder, By G. W. Taylor, Deputy.

Fee $1.90

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun. 14, 1932. [255]

PETITIONER'S EXHIBIT 28.

DEED OF TRUST

This Deed of Trust, Made this 21st day of June, 1926, Between Grace D. Barnes, herein called TRUSTOR, SECURITY TRUST & SAVINGS BANK, a corporation, of Los Angeles, California,

herein called TRUSTEE, and Stanley S. Anderson and Marguerite S. Anderson, husband and wife, as joint tenants, herein called BENEFICIARY.

Witnesseth: That Trustor hereby GRANTS TO TRUSTEE, IN TRUST, WITH POWER OF SALE, all that property in the City of Beverly Hills, County of Los Angeles, State of California, described as:

Lot Twelve (12) in Block Three (3) of Tract Number Forty-one Hundred Sixty (4160), as per map recorded in Book 44, Page 69 of Maps, records of Los Angeles County.

Subject to a Mortgage of $25,000.00 in favor of Security Trust & Savings Bank of record.

FOR THE PURPOSE OF SECURING:

FIRST. Payment of the indebtedness evidenced by one promissory note (and any renewal or execution thereof), substantially in form as follows:

$50,000.00

Los Angeles, California, June 21, 1926

In installments and at the times hereinafter stated, for value received We, jointly and severally promise to pay to Stanley S. Anderson and Marguerite S. Anderson, husband and wife, as joint tenants, or order, at Beverly Hills, California the principal sum of Fifty Thousand and 00/100 Dollars, with interest from date on deferred payments until paid at the rate of seven per cent. per annum, payable quarterly. Said principal sum payable in two installments as follows:

$25,000.00 on or before September 21, 1926

$25,000.00 on or before December 21, 1926

Also costs of collection and reasonable attorney's fees in case this note be not paid at maturity.

Should the interest not be so paid it shall bear like interest as the principal. Should default be made in the payment of any installment of principal or interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Principal and interest payable in gold coin of the United States of the present standard. This note is secured by a certain Deed of Trust to SECURITY TRUST & SAVINGS BANK, a corporation.

(Signed) L. S. BARNES
GRACE D. BARNES [256]

SECOND. Payment and/or performance of every obligation, covenant, promise or agreement herein contained.

TO HAVE AND TO HOLD SAID PROPERTY UPON THE FOLLOWING EXPRESS TRUSTS, TO-WIT:

A. Trustor promises and agrees, during continuance of these Trusts:

1. For the purpose of protecting and preserving the security of this Deed of Trust: (a) to properly care for and keep said property in good condition and repair; (b) not to remove or demolish any building thereon; (c) to complete in good and workmanlike manner any building which may be constructed thereon, and to pay when due all claims for labor performed and materials furnished therefor; (d) to comply with all laws, ordinances and regu-

lations requiring any alterations or improvements to be made thereon; (e) not to commit or permit any waste or deterioration thereof; (f) not to commit, suffer or permit any act to be done in or upon said property in violation of any law or ordinance; (g) to cultivate, irrigate, fertilize, fumigate, prune and/or do any other act or acts, all in a timely and proper manner, which, from the character or use of said property, may be reasonably necessary to protect and preserve said security, the specific enumerations herein not excluding the general.

2. To provide, maintain, and deliver to Beneficiary fire insurance satisfactory to, and with loss payable to Beneficiary. The amount collected under any fire insurance policy shall be credited first, to accrued interest; next, to expenditures hereunder and any remainder upon the principal, and interest shall thereupon cease upon the amount so credited upon principal; provided, however, that at option of Beneficiary, the entire amount so collected or any part thereof may be released to Trustor, without liability upon Trustee for such release.

3. To appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust, the interests of Beneficiary or the rights, powers and duties of Trustee hereunder; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary and/or Trustee may appear.

4. To pay before default or delinquency: (a) all

taxes, assessments or incumbrances (including any debt secured by Deed of Trust), which appear to be prior liens or charges upon said property or any part thereof, including assessments on appurtenant water stock, and any accrued interest, cost or penalty thereon; (b) all costs, fees and expenses of these Trusts, including cost of evidence of title and Trustee's fees in connection with sale, whether completed or not, which amounts shall become due upon delivery to Trustee of Declaration of Default and Demand for Sale, as hereinafter provided.

5. To pay within thirty days after expenditure, without demand, all sums expended by Trustee or Beneficiary under the terms hereof, with interest from date of expenditure at the rate of ten per cent per annum.

B. Should Trustor fail or refuse to make any payment or do any act, which he is obligated hereunder to make or do, at the time and in the manner herein provided, then Trustee and/or Beneficiary, each in his sole discretion, may, without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof:

1. Make or do the same in such manner and to such extent as may be deemed necessary to protect the security of this Deed of Trust, either Trustee or Beenficiary being authorized to enter upon and take possession of said property for such purposes.

2. Commence, appear in or defend any action or proceeding affecting or purporting to affect the security of this Deed of Trust, the interests of Bene-

ficiary or the rights, powers and duties of Trustee hereunder, whether brought by or against Trustor, Trustee or Beneficiary; or

3. Pay, purchase, contest or compromise any prior claim, debt, lien, charge or incumbrance which in the judgment of either may affect or appear to affect the security of this Deed of Trust, the interests of Beneficiary or the rights, powers and duties of Trustee hereunder.

Provided, that neither Trustee nor Beneficiary shall be under any obligation to make any of the payments or do any of the acts above mentioned, but, upon election of either or both so to do, employment of an attorney is authorized and payment of such attorney's fees is hereby secured.

C. Trustee shall be under no obligation to notify any party hereto of any action or proceeding of any kind in which Trustor, Beneficiary and/or Trustee shall be named as defendant, unless brought by Trustee.

D. Acceptance by Beneficiary of any sum in payment of any indebtedness secured hereby, after the date when the same is due, shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums so secured or to declare default as herein provided for failure so to pay.

E. Trustee may, at any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the note secured hereby

for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of said property:

1. Reconvey any part of said property;

2. Consent in writing to the making of any map or plat thereof; or

3. Join in granting any easement thereon.

F. Upon payment of all sums secured hereby and surrender to Trustee, for cancellation, of this Deed of Trust and the note secured hereby, Trustee, upon receipt from Beneficiary of a written request reciting the fact of such payment and surrender, shall reconvey, without warranty, the estate then held by Trustee and the grantee in such reconveyance may be described in general terms as "the person or persons legally entitled thereto," and Trustee is authorized to retain this Deed of Trust and such note. The recitals in such reconveyance of any matters or facts shall be conclusive proof against all persons of the truthfulness thereof.

G. 1. Should breach or default be made by Trustor in payment of any indebtedness and/or in performance of any obligation, covenant, promise or agreement herein mentioned, then Beneficiary may declare all sums secured hereby immediately due, and in such case, shall execute and deliver to Trustee a written Declaration of Default and Demand for Sale and shall surrender to Trustee this Deed of Trust, the note and receipts or other documents evidencing any expenditure secured hereby.

Thereafter there shall be recorded in the office of the recorder of the county or counties wherein said real property or some part thereof is situated, a notice of such breach or default and of election to sell or cause to be sold the herein described property to satisfy the obligations hereof.

2. After three months shall have elapsed following such recordation of said notice, Trustee, without demand on Trustor, shall sell said property as herein provided, having first given notice of the time and place of such sale in the manner and for a time not less than that required by the laws of the State of California for sales of real property under Deeds of Trust.

3. Trustee may postpone sale of all, or any portion, of said property by public announcement at the time fixed by said notice of sale, and may thereafter postpone said sale from time to time by public announcement at the time fixed by the preceding postponement; and without further notice it may make such sale at the time to which the same shall be so postponed, provided, however, that the sale or any postponement thereof must be made at the place fixed by the original notice of sale.

4. At the time of sale so fixed, Trustee may sell the property so advertised, or any part thereof, either as a whole or in separate parcels at its sole discretion, at public auction, to the highest bidder for cash in United States gold coin, all payable at time of sale, and after any such sale and due payment made, shall execute and deliver to such pur-

chaser a deed or deeds conveying the property so sold, but without covenant or warranty, express or implied, regarding title, possession or incumbrances. Trustor hereby agrees to surrender immediately and without demand possession of said property to such purchaser. The recitals, in such deed or deeds of any matters or facts affecting the regularity or validity of said sale, shall be conclusive proof of the truthfulness thereof and such deed or deeds shall be conclusive against all persons as to all matters or facts therein recited. Trustee, Beneficiary, any person on behalf of either, or any other person, may purchase at such sale. [257]

H. Trustee shall apply the proceeds of any such sale to payment of:

1. (a) Expenses of sale; (b) all costs, fees, charges and expenses of Trustee and of these Trusts, including cost of evidence of title and Trustee's fee in connection with sale.

2. All sums expended under the terms hereof, not then repaid, with accrued interest at the rate of 10 per cent per annum.

3. Accrued interest on said note.

4. Unpaid principal of said note; or if more than one, the unpaid principal thereof pro rata and without preference or priority; and

5. The remainder if any to the person or persons legally entitled thereto, upon proof of such right.

I. This Deed of Trust in all its parts applies to,

inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns.

J. Trustee accepts these Trusts when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

WITNESS the hand of Trustor, the day and year first above written.

GRACE D. BARNES

State of California,
County of Los Angeles—ss.

On this 13th day of July, 1926, before me, M. C. Bond, a Notary Public in and for said County, personally appeared Grace D. Barnes, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same.

WITNESS my hand and official seal.

[Notarial Seal] M. C. BOND

Notary Public in and for said County and State.

My commission expires August 28, 1926. [258]

The Trustee's fee, exclusive of posting, advertising and other expenses, in any ordinary sale of property in Los Angeles County will be based upon the following Schedule:

When Deed of Trust secures a sum:

Not exceeding	$ 500.00	$ 50.00
Over $ 500.00 and not exceeding	750.00	75.00
Over 750.00 and not exceeding	1,000.00	100.00
Over 1,000.00 and not exceeding	2,000.00	150.00
Over 2,000.00 and not exceeding	3,500.00	200.00
Over 3,500.00 and not exceeding	5,000.00	250.00
Over 5,000.00 and not exceeding	7,500.00	300.00
Over 7,500.00 and not exceeding	10,000.00	350.00
and 2% of all amounts of principal exceeding		$10,000.00

In all cases the note or notes, and this Deed of Trust, must be surrendered to the Trustee for cancellation when full or final reconveyance is requested, accompanied by the written request of the holder or holders of the note or notes for such reconveyance. In case of partial reconveyance, this Deed of Trust together with the note or notes secured hereby, must be presented to the Trustee for endorsement thereof.

A reasonable fee will be charged by the Trustee for each partial or full reconveyance, with a minimum fee of $2.50 for full reconveyance and $3.50 for each partial reconveyance.

NOTICE. If said real property, or any part thereof, be registered under the Land Title Law at any time when this Deed of Trust is to be presented or surrendered to Trustee for any purpose, then a duplicate or certified copy thereof shall be substituted for the registered original; and in the event

of recordation of a notice of breach or default and of election to cause said property to be sold, a duplicate original of said notice shall also be filed in the office of the Registrar of Titles of the same County or Counties in which said notice is recorded.

DEED OF TRUST
With Power of Sale
Grace D. Barnes
to
Security Trust & Savings Bank
As Trustee for
Stanley S. Anderson, et ux
Dated June 21, 1926
Security Trust & Savings Bank
Los Angeles, California

Recorder's Printed Form 53 154

Order No. 908362

When Recorded Please Mail to: Beverly Hills Branch, Security Trust & Savings Bank, Beverly Hills, Calif.

Escrow #2317

COMPARED: Docum., Wicks; Book, Perkins.

Recorded at Request of Title Insurance & Tr. Co., Jul 19, 1926 at 8:30 A.M. in Book 6258 Page 207 of Official Records, Los Angeles County, Cal. C. L. Logan, County Recorder.

I certify that I have correctly transcribed this document in above mentioned book. #44 Bradbury, Copyist, County Recorder's Office, L. A. Co. 2.90—23 — 44

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun 14, 1932. [259]

PETITIONER'S EXHIBIT 29.

AGREEMENT FOR THE SALE OF REAL ESTATE.

THIS AGREEMENT, made this 16th day of August, 1923, Between STANLEY S. ANDERSON and MARGUERITE S. ANDERSON, his wife, the party of the first part, and PHILIP L. BIXBY the party of the second part.

WITNESSETH: that the said party of the first part in consideration of the covenants and agreements hereinafter contained and made by and on the part of the said party of the second part, agrees to sell and convey unto the said party of the second part, and the said party of the second part agrees to buy all that certain lot, piece or parcel of land situated in the County of Los Angeles, State of California, and bounded and particularly described as follows, to-wit:

A portion of the South half of fractional Section 10, and of the Southwest quarter of Section 11, Township 1 South, Range 15 West, San Bernardino Base and Meridian, being the land heretofore conveyed by Title Guarantee and Trust Company to Stanley S. Anderson and Marguerite S. Anderson, his wife, by deed dated December 6th, 1922, and recorded February 10th, 1923 in Book 1845 Page 197, Official Records Los Angeles County, Calif. which said deed is hereby referred to for a full and detailed description of said property, more particularly described as follows: [260]

Beginning at a point in the line between Sections 10 and 11, Township 1 South, Range 15 West, S.B. M., N. 0°03′ 50″ W., 760.29 feet from the Corner to Sections 10, 11, 14 and 15, said Township and Range, said corner being marked with a 4″x4″ concrete monument, said point being further identified as the northwesterly extremity of Course No. 6 of the description of that 8.0900 acre parcel of land conveyed to C. E. Hoffman by the Title Guarantee and Trust Co. by deed dated Dec. 11th, 1922; thence

1. in reverse order along Courses Nos. 6, 5 and 4 of said description,

1-a, S. 22° 22′ 40″ E., 72.10 feet to a 2″ pipe; thence

1-b, S. 40°07′25″ E., 57.33 feet to a 2″ pipe; thence

1-c, S. 77°40′40″ E., 82.77 feet to a 2″ pipe. being the southwesterly extremity of Course No. 4-m of the description of a 8.1055 parcel of land conveyed to R. E. Fuller by the Title Guarantee and Trust Co. by deed dated Dec. 6th, 1922; thence

2. in reverse order along Courses Nos. 4-m to 4-a, inclusive, of said description,

2-a, N. 20°45′30″ E., 71.22 feet to the beginning of a curve concave to the west and tangent to this course; thence

2-b, along said curve with a central angle of 25°-50′11″, and a radius of 110.19 feet, 49.68

feet to its point of tangency with the next succeeding course; thence

2-c, N. 5°04′30″ W., 24.76 feet to the beginning of a curve concave to the east and tangent to this course; thence

2-d, along said curve with a central angle of 19°-24′10‴, and a radius of 350.96 feet, 118.85 feet to its point of tangency with the next succeeding course; thence

2-e, N. 14°19′40″ E., 39.69 feet to the beginning of a curve concave to the west and tangent to this course; thence [261]

2-f, along said curve with a central angle of 28°-04′00″ and a radius of 200.05 feet, 97.99 feet to its point of tangency with the next succeeding course; thence

2-g, N. 13°44′20″ W., 65.43 feet to a 2″ pipe; thence

2-h, N. 58°50′20″ E., 148.96 feet to the beginning of a curve concave to the northwest and tangent to this course; thence

2-*l*, along said curve with a central angle of 24°-10′30″ and a radius of 233.14 feet, 98.35 feet to a point reverse of curvature; thence

2-j, along a curve concave to the southeast, tangent to the last mentioned curve with a central angle of 16°23′40″ and a radius of 416.31 feet, 119.18 feet to a point of compound curvature; thence

2-k, along a curve concave to the southeast, tangent to the last mentioned curve, with a

central angle of 19°00′00″ and a radius of 70.00 feet, 23.21 feet to a point of compound curvature; thence

2-l, along a curve concave to the South, tangent to the last mentioned curve with a central angle of 23°21′55″, and a radius of 264.18 feet, 107.37 feet to a point in the west line of the Benedict Canyon Road; thence

2-m, N, 53°31′50″ E., 20.00 feet to a point in the center line of the Benedict Canyon Road as shown on County Surveyor's Map No. 8207 on file in the office of the County Surveyor of Los Angeles County, said point being further identified as the northeasterly extremity of Course No. 4-a of said last mentioned description, and further identified as the median point of that certain curve with a radius of 400.00 feet described in Course No. 17 of the description of a 104.59 acre tract conveyed to George E. Read by the Title Guarantee and Trust Company by deed dated November 8th, 1922, and recorded in Book 1611 of Official Records of Los Angeles County, page 193; thence [262]

3. along said curve, concave to the northeast through an angle of 8°01′10″, 55.98 feet to its point of tangency with the next succeeding course; thence

4. N. 28°27′00″ W., 98.89 feet to the northwesterly extremity of Course No. 18 of said last mentioned description, said point being further identified as the southeasterly extremity of Course

No. 22 of the description of a 14.9959 acre tract conveyed to Stanley S. Anderson by the Title Guarantee and Trust Co. by deed recorded in Book 563 of Official Records of Los Angeles County, page 88; thence

5. along Courses Nos. 22 to 28 inclusive of said description,

5-a, N. 72°57′30″ W., 55.08 feet to the beginning of a curve concave to the south and tangent to this course; thence

5-b, along said curve with a central angle of 63°-03′50″ and a radius of 122.48 feet, 134.80 feet to its point of tangency with the next succeeding course; thence

5-c, S. 43°58′40″ W., 40.31 feet to the beginning of a curve concave to the north and tangent to this course; thence

5-d, along said curve with a central angle of 23°-01′45″ and a radius of 190.85 feet, 76.71 feet to its point of tangency with the next succeeding course; thence

5-e, S. 67°00′25‴ W., 82.11 feet to the beginning of a curve concave to the north and tangent to this course; thence

5-f, along said curve with a central angle of 71°-13′35″ and a radius of 143.19 feet, 178.00 feet to its point of tangency with the next succeeding course; thence

5-g, N. 41°46′00″ W., 27.91 feet to a point in the section line between Sections 10 and 11, aforementioned township and range, N. 0°-

03′50″ W., 1429.88 feet from the common corner to Sections 10, 11, 14 and 15; thence [263]

6. N. 39°42′30″ W., 34.20 feet along Course No. 29 of said last mentioned description to the northwesterly extremity of Course No. 3-h of the description of that 84.804 acre tract conveyed to Van B. Foster by the Title Guarantee and Trust Co. by deed dated Jan. 5th, 1923; thence

7. in reverse order along Courses 3-h to 3-a of said description,

7-a, S. 48°14′00″ W., 1.23 feet to the beginning of a curve concave to the southeast, tangent to a line bearing N. 41°46′00″ W., and normal to this course; thence

7-b, along said curve with a central angle of 153°-39′30″, and a radius of 30.00 feet, 80.45 feet to a point; thence

7-c, along a line normal to the last mentioned curve, S. 74°34′30″ W., 20.00 feet to a 2″ pipe; thence

7-d, S. 1°13′15″ E., 36.84 feet to a 2″ pipe; thence

7-e, S. 4°24′50″ W., 175.52 feet to a 2″ pipe, thence

7-f, S. 31°07′40″ W., 46.09 feet to a 2″ pipe; thence

7-g, S. 36°48′40″ W., 202.13 feet to a 2″ pipe; thence

7-h, S. 52°32′50″ W., 24.64 feet to a 2″ pipe, being the northeasterly extremity of Course No. 8 of the description of the 8.0900 acre tract conveyed to C. E. Hoffman before mentioned; thence

8. in reverse order along Courses Nos. 8 and 7 of said description,

8-a, S. 54°35′15″ E., 296.00 feet to a 2″ pipe; thence

8-b, S. 25°51″00″ E., 69.69 feet to the point of beginning containing 7.0197 acres.

SUBJECT to conditions, restrictions, reservations and rights of way of record. [264]

for the sum of Forty-two Thousand ($42,000.00) Dollars, lawful money of the United States, and the said party of the second part, in consideration of the premises, agrees to buy and pay the said sum of Forty-two Thousand ($42,000.00) Dollars, as follows, to-wit:

Fourteen Thousand ($14,000.00) Dollars upon execution and delivery of this Agreement, receipt of which is hereby acknowledged, and the further sum of Fourteen Thousand ($14,000) or more dollars, on or before the 16th day of August, 1924, and Fourteen Thousand ($14,000) Dollars or more dollars, on or before the 16th day of August, 1925, together with interest at the rate of seven per cent per annum, payable quarterly.

All payments of principal and interest to be paid at First National Bank, Beverly Hills, Calif.

And the said party of the second part agrees to pay all District, City, State and County Taxes or Assessments of whatsoever nature which are now or may hereafter become due on the premises herein described, those now due to be pro rated from date hereof.

IT IS UNDERSTOOD AND AGREED, That time is of the essence of this Contract, and in the event of failure to comply with the terms hereof, by said party of the second part, then the said party of the first part shall be released from all obligations in law and equity, to convey said property, and the said party of the second part shall forfeit all right thereto and to all money theretofore paid under this Con- [260] tract; but the said parties of the first part on receiving the full payments, at the time and in the manner above mentioned, agree to deliver to the said party of the second part a Guarantee of Title, issued by the TITLE GUARANTEE AND TRUST COMPANY of Los Angeles, California, showing the title to said property to be vested in grantors or their assigns free of incumbrances, except conditions, reservations and restrictions contained in said deed recorded in Book 1845 Page 197 Official Records Los Angeles County, to all of which conveyance shall be subject, and to execute and deliver to the said party of the second part or his assigns a good and sufficient deed of grant, bargain and sale.

IN WITNESS WHEREOF, The parties hereto have set their hands the day and year first above written.

STANLEY S. ANDERSON
MARGUERITE S. ANDERSON
PHILIP L. BIXBY

Signed and Delivered in the presence of

....

State of California,
County of Los Angeles—ss.

On this..........................day of.., 19............ before me.., a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared ...., known to me to be the person......described in and who executed the within instrument, and acknowledged to me that ......he......executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

....

Notary Public in and for said County and State.

No...

AGREEMENT FOR THE SALE OF
REAL ESTATE

Stanley S. Anderson *at* al.

to

Philip L. Bixby

Dated August 16th, 1923

Title Guarantee and Trust Company

Paid up Capital and Surplus over

Two Million Dollars

Title Guarantee Building

Los Angeles, California

Order No.............................

When recorded, please mail to

....

....

[265]

[Printer's Note]: As the printed form on the reverse of the preceding exhibit has not been filled in, the same is not set forth in printed record.

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun. 14, 1932. [266]

KNOW ALL MEN BY THESE PRESENTS

That the SECURITY TRUST & SAVINGS BANK, a corporation duly organized and existing under the laws of the State of California, and having its principal place of business in the City of Los Angeles, County of Los Angeles, does hereby certify and declare that a certain mortgage, bearing date the 16th day of July, 1923 made and executed by Stanley S. Anderson and Marguerite S. Anderson Mortgagor, to SECURITY TRUST & SAVINGS BANK, Mortgagee, and recorded on the 31st day of July, 1923 in book 2757, page 4 of Official Records of Los Angeles County, California, together with the debt thereby secured, is fully paid, satisfied and discharged.

In Witness Whereof, The said Security Trust & Savings Bank has caused these presents to be duly signed by its Vice-President and Assistant Secretary and has caused its corporate seal to be hereunto affixed this 23rd day of November, 1927.

[Seal] SECURITY TRUST & SAVINGS BANK

By E. F. Consigny,

Vice-President,

F. N. Benham,

Assistant Secretary.

State of California,
County of Los Angeles.—ss.

On this 23rd day of November, 1927 *19......*, before me, T. F. Linhart a Notary Public in and for said County, residing therein, duly commissioned and sworn, personally appeared E. F. Consigny known to me to be the Vice-President, and F. N. Benham known to me to be the Assistant Secretary of the SECURITY TRUST & SAVINGS BANK, the corporation that executed the within and foregoing instrument, known to me to be the persons who executed the within instrument on behalf of the corporation therein named and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] T. F. LINHART,
Notary Public in and for the County of Los Angeles,
State of California. [267]

Security Trust & Savings Bank
Los Angeles, Cal.
to
Stanley S. Anderson and Marguerite S. Anderson
SATISFACTION OF MORTGAGE

Dated November 23, 1927.

1361 Order No.

When recorded please mail this instrument to Stanley S. Anderson, Beverly Hills, Calif.

Compared. Read by, Stager. Document, Nelson.

Recorded Nov. 29 1927 19 min. past 10 A. M. in

Book 7078 at page 74 of Official Records, Los Angeles County, Cal. C. L. Logan, County Recorder.

Recorded at request of Mortgagor.

I certify that I have correctly transcribed this document in above mentioned book. H. E. Holzner #169 Copyist County Recorder's Office, L. A. County, Cal. [268]

THIS MORTGAGE, Made the sixteenth day of July, 1923, By STANLEY S. ANDERSON and MARGUERITE S. ANDERSON, his wife, of the County of Los Angeles, State of California, hereinafter called the Mortgagor, to the SECURITY TRUST & SAVINGS BANK, a corporation duly organized under the laws of the State of California, and having its principal place of business at the City of Los Angeles (which fact is hereby expressly admitted), Mortgagee;

Witnesseth: That the Mortgagor hereby mortgages to the Mortgagee all that certain real property, situate in the City of Beverly Hills, County of Los Angeles, State of California, and particularly described as follows:

Lots One (1) and Two (2) in Block Two (2) of Beverly, in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 11 Page 94 of Maps, in the office of the County Recorder of said County. [269]

Including all buildings and improvements thereon or that may be erected thereon; together with all

and singular the tenements, hereditaments and appurtenances, easements, right-of-ways, water and water rights, pipes, flumes and ditches thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; for the purpose of securing the faithful performance of all the covenants, agreements and conditions herein set forth, and the performance of the promises and obligations of this mortgage and payment of the indebtedness evidenced by one promissory note (and any renewal or extension thereof) in words and figures as follows:

$30,000.00 Los Angeles, California, July 16, 1923.

On July 16, A. D., 1926, after date, and for value received, we, jointly and severally, promise to pay to the SECURITY TRUST & SAVINGS BANK, or order, at its Head Office, Fifth and Spring Sts., in the City of Los Angeles, California, the sum of Thirty Thousand Dollars, with interest from date until paid at the rate of seven per cent. per annum, payable quarterly. Should the interest not be so paid, it shall become a part of the principal and thereafter bear like interest as the principal. Should default be made in the payment of any installment of interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Principal and interest payable in Gold Coin of the United States. This note is

secured by a mortgage of even date herewith upon real property.

STANLEY S. ANDERSON
MARGUERITE S. ANDERSON

(U. S. Int. Rev. stamps $6.00 cancelled.)

The Mortgagor agrees to pay, as soon as due, all taxes, assessments and incumbrances, which may be, or appear to be, liens upon said property or any part thereof, including taxes levied or assessed upon this mortgage or upon the debt secured hereby, and hereby waives all right to treat the payment of such taxes or assessments as a payment on the debt hereby secured or as being to any extent a discharge thereof; and the Mortgagor agrees to keep said buildings insured against fire, to the amount required by and in such insurance companies as may be satisfactory to the Mortgagee, and to assign the policies therefor to the Mortgagee; and to pay and settle promptly (or cause to be removed by suit or otherwise) all adverse claims against said property.

In case said taxes, assessments or incumbrances so agreed to be paid by the Mortgagor be not so paid, or said buildings so insured, and said policies so assigned, or said adverse claims so paid, settled or removed, then the Mortgagee, being hereby made the sole judge of the legality thereof, may, without notice to the Mortgagee, pay such taxes, assessments, or incumbrances, obtain such policies of insurance in its own name as Mortgagee, and pay or settle any or all such adverse claims or cause the same to be removed by suit or otherwise.

In the event of a loss under said policies of fire

insurance, the amount collected thereon shall be credited, at the option of the holder of this mortgage; first, either to the interest due, if any, upon said indebtedness, and/or to the repayment of any advances hereunder, and the remainder, if any, upon the principal sum of the note secured hereby, and interest shall thereupon cease on the amount so credited, or second, to be used in replacing or restoring the improvements partially or totally damaged, to a condition satisfactory to said Mortgagee.

The Mortgagor agrees to keep said property in good condition and repair and to permit no waste thereof, and should said property, or any part thereof, require any inspection, repair, cultivation, irrigation or protection, other than that provided by the Mortgagor, then the Mortgagee, being hereby made the sole judge of the necessity thereof, and without notice to the Mortgagor, may enter, or cause entry to be made, upon said property, and inspect, repair, cultivate, irrigate or protect said property as it may deem necessary. All sums expended by the Mortgagee in doing any or all of the things authorized in this mortgage, shall be secured hereby and shall be paid to the Mortgagee by the Mortgagor in said gold coin, on demand, together with interest from the date of payment, at the same rate of interest (compounded monthly until repaid) as is provided to be paid in the note hereinbefore set out.

The Mortgagor promises to pay said note according to the terms and conditions thereof; and in case of default in the payment of the same, or of

any installment of interest thereon when due, or in the performance of any of the covenants or agreements herein contained on the part of the Mortgagor, the whole sum of money then secured by this mortgage shall become immediately due and payable at the option of the holder of said note, and this mortgage may thereupon, or at any time during such default, be foreclosed, and the filing of the complaint in foreclosure shall be conclusive of the exercise of such option by the Mortgagee without any further notice thereof to said Mortgagor.

In case any action be brought to foreclose this mortgage, or the Mortgagee institute, intervene, join or defend any action affecting this mortgage or the property securing the same or any of its rights as such Mortgagee, then and in any or all of such cases, the Mortgagor agrees to pay all costs and expenses thereof, including a reasonable sum, to be fixed by the Court, as attorney's fees, whether suit progress to judgment or not; also such sums as the Mortgagee may pay for searching the title to the mortgaged property subsequent to the date of record of this mortgage, or for surveying said property and said attorney's fees; and all sums so paid or expended shall become due upon filing of the complaint, or appearing in any such action, shall be secured hereby, and shall be repaid to the Mortgagee in said gold coin.

In any such action to foreclose this mortgage, a Receiver shall, upon application of the plaintiff therein and as a matter of right, and without notice to the Mortgagor, be appointed by the Court to

take charge of said property, to receive and collect the rents, issues and profits thereof, and apply them to the payment of the taxes, which may be due or become due during the pendency of this action and until sale be finally made, the costs, commissions of the receiver and his attorney's fees, in a reasonable sum to be fixed by the Court, and any deficiency on the obligations secured by this mortgage which may remain after the property shall have been sold and the proceeds thereof applied on the judgment secured in such foreclosure. [270]

It is also agreed that should this mortgage be foreclosed, then in the decree of foreclosure entered in such action, the property described therein may be ordered sold en masse—or as one lot or parcel—and not as several parcels, at the exclusive option of the Mortgagee.

And also, that the Mortgagee may at any time, without notice, release portions of said mortgaged premises from the lien of this mortgage without affecting the personal liability of any person for the payment of the said indebtedness or the lien of this mortgage upon the remainder of the mortgaged premises, for the full amount of said indebtedness then remaining unpaid.

With the consent and acceptance of the Mortgagor, but not otherwise, this mortgage and the debt secured thereby may be satisfied and discharged at any time after one year from date hereof, and before maturity, upon payment of principal, accrued interest to date of payment, advances, if any, and a bonus of three months' unearned in-

terest, provided there is then existing no default of any of the terms and provisions of this mortgage or the note which it secures.

The Mortgagor also hereby covenants and agrees that if, during the life of this mortgage, proceedings be instituted for the registration of the hereinabove described land under the "Land Title Law," approved by the electors of California, and in effect December 19th, 1914, and any amendments thereof, or any other law governing the registration of titles to land, the Mortgagor will pay any sum or sums expended by the Mortgagee or its assigns in protecting its interests under this mortgage, including a reasonable attorney's fee, whether appearance be made in the action or proceeding to so register said land or not, the said Mortgagee and its assigns being hereby made the sole judge of the necessity of incurring said expense and attorney's fee, and of the amount thereof. Any and all certificates or other evidence of title to said property shall be forthwith delivered to the Mortgagee to be held by it during the life of this mortgage.

In this instrument the masculine gender includes the feminine, and the singular number includes the plural whenever the context so requires; the words "Promissory Note" include all promissory notes or other evidence of indebtedness hereinbefore set forth for which this mortgage is intended to be security.

It is understood that there are no agreements or promises as to this mortgage, except as herein stated.

The Mortgagor also hereby mortgages the property hereinbefore described, to secure every promise and agreement therein contained, direct or conditional, and guarantees and affirms that said property is now free from any secret equities, trusts or incumbrances made or suffered by, or known to, said Mortgagor.

Every stipulation, agreement and appointment herein in favor of said Mortgagee, shall apply and inure to the benefit of its successors or assigns.

Witness: The hands and seals of said Mortgagor the day and year first above written.

[Seal] STANLEY S. ANDERSON
[Seal] MARGUERITE S. ANDERSON

State of California,
County of Los Angeles.—ss.

On this 24th day of July, 1923, before me, O. N. Beasley a Notary Public in and for said County, residing therein, duly commissioned and sworn, personally appeared Stanley S. Anderson and Marguerite S. Anderson his wife known to me to be the persons whose names are subscribed to the foregoing instrument, and they acknowledge to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[Notarial Seal] O. N. BEASLEY,
Notary Public in and for the County of Los Angeles,
State of California. [271]

31840

MORTGAGE

Individual

Stanley S. Anderson et ux

to

Security Trust & Savings Bank

Los Angeles, Calif.

Dated July 16, 1923.

295

Order No. 685633

When recorded please mail this instrument to Loan Dept. Head Office Security Trust & Savings Bank, Fifth and Spring Streets, Los Angeles, Calif.

Compared. Read by Blake. Document Edwards.

Recorded at request of Title Insurance & Tr. Co. Jul 31 1923 at 8:30 A. M. in Book 2757 Page 4 of Official Records, Los Angeles County, Cal. C. L. Logan, County Recorder,

I certify that I have correctly transcribed this document in above mentioned book. #53 H. Fairman, Copyist, County Recorder's Office, L. A. Co., Cal. 2.50/20 [272]

[Endorsed]: Beverly Hills Branch Security Trust & Savings Bank 1 Paid 1 Nov 23 1927 Note Dept.

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun. 14, 1932.

PETITIONER'S EXHIBIT 31.

KNOW ALL MEN BY THESE PRESENTS

That the SECURITY TRUST & SAVINGS BANK, a corporation duly organized and existing under the laws of the State of California, and having its principal place of business in the City of Los Angeles, County of Los Angeles, does hereby certify and declare that a certain mortgage, bearing date the 31st. day of January, 1924 made and executed by Stanley S. Anderson and Marguerite S. Anderson, his wife, of the City of Beverly Hills, County of Los Angeles, State of California Mortgagor, to SECURITY TRUST & SAVINGS BANK, Mortgagee, and recorded on the 19th day of February, 1924 in book 3592, page 297 of Official Records of Los Angeles County, California, together with the debt thereby secured, is fully paid, satisfied and discharged.

In Witness Whereof, The said Security Trust & Savings Bank has caused these presents to be duly signed by its Vice-President and Assistant Secretary and has caused its corporate seal to be hereunto affixed this 8th day of February, 1927.

[Seal] SECURITY TRUST & SAVINGS BANK

By E. F. Consigny,
Vice-President,

By F. N. Benham,
Assistant Secretary.

State of California,
County of Los Angeles.—ss.

On this 8th day of February 1927, before me, T. F. Linhart a Notary Public in and for said County, residing therein, duly commissioned and sworn, personally appeared E. F. Consigny known to me to be the Vice-President, and F. N. Benham known to me to be the Assistant Secretary of the SECURITY TRUST & SAVINGS BANK, the corporation that executed the within and foregoing instrument, known to me to be the persons who executed the within instrument on behalf of the corporation therein named and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] T. F. LINHART,
Notary Public in and for the County of Los Angeles,
State of California.

My Commission expires February 17, 1930. [273]

Security Trust & Savings Bank
Los Angeles, Cal.
to
Stanley S. Anderson et ux.

SATISFACTION OF MORTGAGE

Dated February 8th 1927.

1263 Order No.

When recorded please mail this instrument to Stanley S. Anderson, Beverly Hills, Calif.

Compared. Document, Whitney. Book, Stein.

Recorded Feb 15 1927 51 min. past 9 A. M. in Book 6132 at page 358 of Official Records, Los Angeles County, Cal. C. L. Logan, County Recorder.

Recorded at request of Mortgagor.

I certify that I have correctly transcribed this document in above mentioned book. Anna Manheim. Copyist County Recorder's office, L. A. County, Cal. 1.00/4 [274]

THIS MORTGAGE, Made the Thirty-first day of January, 1924, By STANLEY S. ANDERSON and MARGUERITE S. ANDERSON, his wife, of the City of Beverly Hills, County of Los Angeles, State of California, hereinafter called the Mortgagor, to the SECURITY TRUST & SAVINGS BANK, a corporation duly organized under the laws of the State of California, and having its principal place of business in the City of Los Angeles, California (which fact is hereby expressly admitted), Mortgagee;

WITNESSETH: That the Mortgagor hereby mortgages to the Mortgagee all that certain real property, situate in the City of Beverly Hills, County of Los Angeles, State of California, and particularly described as follows:

Lot One (1) in Block Three (3) of Beverly, as per map recorded in Book 11 Page 94 of Maps, in the office of the County Recorder of said County. [275]

Including all buildings and improvements thereon or that may be erected thereon; together with all and singular the tenements, hereditaments and appurtenances, easements, right-of-ways, water and water rights, wells, pumping stations, engines and appliances, pipes, flumes and ditches thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; for the purpose of securing the faithful performance of all the covenants, agreements and conditions herein set forth, and the performance of the promises and obligations of this mortgage and payment of the indebtedness evidenced by one promissory note (and any renewal or extension thereof) in words and figures as follows:

Los Angeles, California,
$45,000.00 January 31st, 1924

On January 31st, A.D., 1927 after date, and for value received, we, jointly and severally promise to pay to the SECURITY TRUST & SAVINGS BANK, of Los Angeles, or order at its Head Office, Fifth and Spring Streets, in the City of Los Angeles, California, the sum of Forty-five Thousand Dollars, with interest from date until paid at the rate of seven per cent. per annum, payable quarterly. Should the interest not be so paid, it shall become part of the principal and thereafter bear like interest as the principal. Should default be made in the payment of any installment of interest when due, then the whole sum of principal and interest

shall become immediately due and payable at the option of the holder of this note. Principal and interest payable in Gold Coin of the United States of the present standard. This note is secured by a mortgage of even date herewith upon real property.

STANLEY S. ANDERSON
MARGUERITE S. ANDERSON

Revenue Stamps in the amount of
$9.00 affixed and cancelled.

The Mortgagor agrees to pay, as soon as due, all taxes, assessments and incumbrances, which may be, or appear to be, liens upon said property or any part thereof, including taxes levied or assessed upon this mortgage or upon the debt secured hereby, and hereby waives all right to treat the payment of such taxes or assessments as a payment on the debt hereby secured or as being to any extent a discharge thereof; and the Mortgagor agrees to keep said buildings insured against fire, to the amount required by and in such insurance companies as may be satisfactory to the Mortgagee, and to assign the policies therefor to the Mortgagee; and to pay and settle promptly (or cause to be removed by suit or otherwise) all adverse claims against said property.

In case said taxes, assessments or incumbrances so agreed to be paid by the Mortgagor be not so paid, or said buildings so insured, and said policies so assigned, or said adverse claims so paid, settled or removed, then the Mortgagee, being hereby made the sole judge of the legality thereof, may, without no-

tice to the Mortgagor, pay such taxes, assessments, or incumbrances, obtain such policies of insurance in its own name as Mortgagee, and pay or settle any or all such adverse claims or cause the same to be removed by suit or otherwise.

In the event of a loss under said policies of fire insurance, the amount collected thereon shall be credited at the option of the holder of this mortgage; first, either to the interest due, if any, upon said indebtedness, and the remainder, if any, upon the principal sum, and interest shall thereupon cease on the amount so credited on said principal sum, or second, to be used in replacing or restoring the improvements partially or totally damaged, to a condition satisfactory to said Mortgagee.

The Mortgagor agrees to keep said property in good condition and repair and to permit no waste thereof, and should said property, or any part thereof, require any inspection, repair, cultivation, irrigation or protection, other than that provided by the Mortgagor, then the Mortgagee, being hereby made the sole judge of the necessity thereof, and without notice to the Mortgagor, may enter, or cause entry to be made, upon said property, and inspect, repair, cultivate, irrigate or protect said property as it may deem necessary.

All sums expended by the Mortgagee in doing any or all of the things authorized in this mortgage, shall be secured hereby and shall be paid to the Mortgagee by the Mortgagor in said gold coin, on demand, together with interest from the date of payment, at the same rate of interest (compounded monthly until repaid) as is provided to be paid in the note hereingbefore set out.

The Mortgagor promises to pay said note according to the terms and conditions thereof; and in case of default in the payment of the same, or of any installment of interest thereon when due, or in the performance of any of the covenants or agreements herein contained on the part of the Mortgagor, the whole sum of money then secured by this mortgage shall become immediately due and payable at the option of the holder of said note, and this mortgage may thereupon, or at any time during such default, be foreclosed, and the filing of the complaint in foreclosure shall be conclusive of the exercise of such option by the Mortgagee without any other or further notice thereof to said Mortgagor.

In case any action be brought to foreclose this mortgage, or the Mortgagee institute, intervene, join or defend any action affecting this mortgage or the property securing the same or any of its rights as such Mortgagee, then and in any or all of such cases, the Mortgagor agrees to pay all costs and expenses thereof, including a reasonable sum, to be fixed by the Court, as attorney's fees, whether suit progress to judgment or not; also such sums as the Mortgagee may pay for searching the title to the mortgaged property subsequent to the date of record of this mortgage, or for surveying said property and said attorney's fees; and all sums so paid or expended shall become due upon filing of the complaint, or appearing in any such action, shall be secured hereby, and shall be repaid to the Mortgagee in said gold coin.

In any such action to foreclose this mortgage, a

Receiver shall, upon application of the plaintiff therein and as a matter of right, and without notice to the Mortgagor, be appointed by the Court to take charge of said property, to receive and collect the rents, issues and profits thereof, and apply them to the payment of the taxes, which may be due or become due during the pendency of this action and until sale be finally made, the costs, commissions of the receiver and his attorney's fees, in a reasonable sum to be fixed by the Court, and any deficiency on the obligations secured by this mortgage which may remain after the property shall have been sold and the proceeds thereof applied on the judgment secured in such foreclosure. [276]

It is also agreed that should this mortgage be foreclosed, then in the decree of foreclosure entered in such action, the property described therein may be ordered sold en masse—or as one lot or parcel—and not as several parcels, at the exclusive option of the Mortgagee.

And also that the Mortgagee may at any time, without notice, release portions of said mortgaged premises from the lien of this mortgage without affecting the personal liability of any person for the payment of the said indebtedness or the lien of this mortgage upon the remainder of the mortgaged premises, for the full amount of said indebtedness then remaining unpaid.

This mortgage and the debt secured thereby may be satisfied and discharged at any time after one year from date hereof, and before maturity, upon payment of principal, accrued interest to date of

payment, advances, if any, and ninety days' unearned interest, provided there is then existing no default of any of the terms and provisions of this mortgage or the note which it secures.

The Mortgagor also hereby covenants and agrees that if, during the life of this mortgage, proceedings be instituted for the registration of the hereinabove described land under the "Land Title Law," approved by the electors of California, and in effect December 19th, 1914, and any amendments thereof, or any other law governing the registration of titles to land, the Mortgagor will pay any sum or sums expended by the Mortgagee or its assigns in protecting its interests under this mortgage, including a reasonable attorney's fee, whether appearance be made in the action or proceeding to so register said land or not, the said Mortgagee and its assigns being hereby made the sole judge of the necessity of incurring said expense and attorney's fee, and of the amount thereof. Any and all certificates or other evidence of title to said property shall be forthwith delivered to the Mortgagee to be held by it during the life of this mortgage.

In this instrument the masculine gender includes the feminine, and the singular number includes the plural whenever the context so requires; the words "Promissory Note" include all promissory notes or other evidence of indebtedness hereinbefore set forth for which this mortgage is intended to be security.

It is understood that there are no agreements or promises as to this mortgage, except as herein stated.

The Mortgagor also hereby mortgages the property hereinbefore described, to secure every promise and agreement therein contained, direct or conditional, and guarantees and affirms that said property is now free from any secret equities, trusts or incumbrances made or suffered by, or known to, said Mortgagor.

Every stipulation, agreement and appointment herein in favor of said Mortgagee shall apply and inure to the benefit of its successors or assigns.

Witness: The hands and seals of said Mortgagors the day and year first above written.

[Seal] STANLEY S. ANDERSON
[Seal] MARGUERITE S. ANDERSON

State of California,
County of Los Angeles.—ss.

On this fourth day of February, 1924, before me, M. C. Bond a Notary Public in and for said County, residing therein, duly commissioned and sworn, personally appeared Stanley S. Anderson and Marguerite S. Anderson, husband and wife known to me to be the persons whose names are subscribed to the foregoing instrument, and they acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[Notarial Seal] M. C. BOND,
Notary Public in and for the County of Los Angeles,
State of California.

My Commission expires August 28, 1926. [277]

33053
MORTGAGE
Individual
Stanley S. Anderson, et ux,
to
Security Trust & Savings Bank
Los Angeles, Calif.

Dated January 31st, 1924.

336
Order No. 33218

When recorded please mail this instrument to Head Office Security Trust & Savings Bank, Fifth and Spring Streets, Los Angeles, Calif.

Compared. Read by Strobel. Document, Elliott.

Recorded at request of Title Insurance & Tr. Co. Feb 19 1924 at 8:30 A. M. in Book 3592 Page 297 of Official Records, Los Angeles County, Cal. C. L. Logan, County Recorder.

I certify that I have correctly transcribed this document in above mentioned book. G. C. Lindstrom, Copyist, County Recorder's Office, L. A. Co., Cal. #63 2.50/20 [278]

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun. 14, 1932.

PETITIONER'S EXHIBIT 32.

FOR A VALUABLE CONSIDERATION the undersigned hereby assigns to COMMERCIAL BUILDING AND FINANCE CORPORATION, a corporation, the mortgage executed by STANLEY S. ANDERSON and MARGUERITE S.

ANDERSON, husband and wife, recorded November 5, 1925, in Book 4156 Page 355 of Official Mortgage Records in the office of the Recorder of Los Angeles County, California, together with the note secured thereby.

IN WITNESS WHEREOF, the undersigned has caused its corporate name and seal to be affixed by its President and Secretary thereunto duly authorized.

Dated October 21, 1925.

HOLLYWOOD HOLDING AND DEVELOPMENT CORP.
By C. E. Toberman, President
By Parker V. Foster, Secretary.

State of California,
County of Los Angeles.—ss.

On this 3rd day of November 1925 before me Agnes Erne a Notary Public in and for said County, personally appeared C. E. Toberman known to me to be the President, and Parker V. Foster known to me to be the Secretary of the Corporation that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.

Witness my hand and official seal.

[Seal] AGNES ERNE
Notary Public in and for the County of Los Angeles, State of California.

My Commission expires Oct. 16, 1929. [279]

ASSIGNMENT OF MORTGAGE
Corporation
Hollywood Holding and Development Corp.
to
Commercial Building and Finance Corporation.
October 21, 1925.

California Title Insurance Co.
Capital Paid Up $1,000,000.00
Merged with
Los Angeles Title Insurance Co.
Incorporated Aug. 21, 1890
626 South Spring Street
Los Angeles, Cal.
1644 Order No.
Your Escrow No.......................

When recorded please mail to Commercial Building and Finance Corporation, 6763 Hollywood Blvd., Hollywood, Calif.

Compared. Read by Nelson. Document, Wicks.

Recorded Nov 5 1925 9 min. past 2 P. M. in Book 5411 at Page 169 of Official Records, Los Angeles County, Cal. C. L. Logan, County Recorder.

Recorded at request of Assignee. #165

I certify that I have correctly transcribed this document in above mentioned book. E. E. Masters, Copyist, Recorder's Office, L. A. Co., Cal. 70/3 [280]

FOR A VALUABLE CONSIDERATION the undersigned hereby assigns to Hugo C. Boorse and Gerda Winner Boorse, as joint tenants with right

the mortgage of survivorship executed by Stanley S. Anderson and Marguerite S. Anderson, husband and wife, recorded November 5, 1924, in Book 4156 Page 355 of Official Mortgage Records in the office of the Recorder of Los Angeles County, California, together with the note secured thereby.

IN WITNESS WHEREOF, the undersigned has caused its corporate name and seal to be affixed by its President and Secretary thereunto duly authorized.

Dated January 26, 1926.

COMMERCIAL BUILDING AND FINANCE CORPORATION
By C. E. Toberman, President
By E. D. Dietz, Secretary

State of California,
County of Los Angeles.—ss.

On this 26th day of January 1926 before me Agnes Erne a Notary Public in and for said County, personally appeared C. E. Toberman known to me to be the President, and E. D. Dietz known to me to be the Secretary of the Corporation that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.

Witness my hand and official seal.

[Seal] AGNES ERNE
Notary Public in and for said County and State.

My Commission expires Oct. 16, 1929. [281]

ASSIGNMENT OF MORTGAGE

Corporation

Commercial Building and Finance Corporation

to

Hugo C. Boorse & Gerda Winner Boorse, as joint tenants with right of survivorship

January 26, 1926

California Title Insurance Co.

Capital Paid Up $1,000,000

Merged with

Los Angeles Title Insurance Co.

Incorporated Aug. 21, 1890

626 South Spring Street

Los Angeles, Cal.

Order No.......................... 1080

Your Escrow No..........................

When recorded please mail to

Commercial Bldg. & Finance Corp.

6763 Hollywood Blvd., Hollywood, Calif.

Compared: Document, Austin; Book, Embree.

Recorded Feb. 1, 1926, 37 min. past 1 P.M., in Book 5727 at page 187 of Official Records, Los Angeles County, Cal. C. L. Logan, County Recorder.

Recorded at request of Assignee.

I certify that I have correctly transcribed this document in above mentioned book. C. Fletcher, Copyist, County Recorder's Office, L. A. Co., Cal.

80/3 36 [282]

IN CONSIDERATION of the payment of the debt secured by the mortgage executed by Stanley S. Anderson and Marguerite S. Anderson recorded November 5th, 1924 in Book 4156, Page 355 of

Official—Mortgage Records, in the office of the Recorder of Los Angeles County, California, the undersigned hereby releases the property described in said mortgage from the lien thereof.

Dated November 4th, 1927.

HUGO C. BOORSE
GERDA WINNER BOORSE

State of California,
County of Los Angeles—ss.

On this 4th day of November, 1927 before me, Agnes Erne, a Notary Public in and for said County, personally appeared Hugo C. Boorse and Gerda Winner Boorse, known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same.

Witness my hand and seal.

AGNES ERNE

Notary Public in and for the County of Los Angeles, State of California. My Commission expires Oct. 16, 1929. [283]

Please write the name and address on the back of each document you want returned by mail.

No.........................

RELEASE

Individual

Hugo C. Boorse and Gerda Winner Boorse

to

Stanley S. Anderson and Marguerite S. Anderson

November 4th, 1927

California Title Insurance Co.

Capital Paid Up $1,000,000

Merged with

Los Angeles Title Insurance Co.

Incorporated Aug. 21, 1890

626 South Spring Street, Los Angeles, Cal.

Please write the name and address on the back of each document you want returned by mail.

Order No.................................... 1272

Your Escrow No....................................

When recorded please mail to

E. P. Adams, 601 Central Bldg., 108 W. 6th St., L. A.

Recorded Nov. 23, 1927 18 min. past 10 A.M. in Book 7944 at page 384 of Official Records, Los Angeles County, Cal. C. L. Logan, County Recorder.

Recorded at request of Mortgagor.

I certify that I have correctly transcribed this document in above mentioned book. W. Shea, Copyist, County Recorder's Office, L. A. County, Cal.

Compared: Read by Stamper. Document Whaley.

80/2 [284]

PETITIONER'S EXHIBIT 32

THIS MORTGAGE, Made November 1, 1924, By STANLEY S. ANDERSON and MARGUERITE S. ANDERSON, husband and wife, of Beverly Hills, California, hereinafter called Mortgagor,

To HOLLYWOOD HOLDING & DEVELOPMENT CORPORATION, a corporation of the State of Delaware, hereinafter called Mortgagee,

WITNESSETH: That Mortgagor hereby mortgages to Mortgagee, the real property in the City of Los Angeles, County of Los Angeles, State of California, described as

Lots Three Hundred Fifty-nine (359) and Three Hundred Sixty (360) of Tract Number 7615, as per map recorded in Book 85, Pages 15, 16 and 17, of Maps, in the office of the County Recorder of said Los Angeles County.

including all buildings and improvements thereon (or that may hereafter be erected thereon); together with all and singular the tenements, hereditaments and appurtenances, water and water rights, pipes, flumes, ditches and other rights thereunto belonging or in any wise now or hereafter appertaining thereto, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. [285]

For the purpose of Securing

First: Payment of the indebtedness evidenced by one promissory note (and any renewal of extension thereof) in form as follows:

Los Angeles, California,

$20,000.00 November 1, 1924.

Three (3) years after date, for value received,

I, we, or either of us promise to pay to HOLLYWOOD HOLDING & DEVELOPMENT CORPORATION or order, at 6763 Hollywood Boulevard, Hollywood, California, the sum of Twenty Thousand and No/100 Dollars, with interest thereon from date hereof until paid, at the rate of seven (7) per cent. per annum, payable quarterly. Should interest not be so paid, it shall become part of the principal and thereafter bear like interest therewith. Should default be made in payment of interest when due, the whole sum of principal and interest shall, at the option of the holder of this note, become immediately due. Principal and interest payable in United States gold coin. This note is secured by a mortgage upon real property.

(Signed) STANLEY S. ANDERSON
MARGUERITE S. ANDERSON

The makers of this note reserve the right to pay the entire principal hereof at any time prior to maturity by paying in addition thereto ninety (90) days unearned interest, together with the accrued interest to date of such payment. Such accrued and bonus interest, added to interest already paid, not to exceed interest for entire period of note.

Second: Payment of attorney's fees, in a reasonable sum to be fixed by the Court and all costs and expenses in any action brought to foreclose this mortgage or any action or proceeding affecting the rights either of Mortgagor or Mortgagee in said real property, whether such action or proceeding progress to judgment or not; also such sums as

Mortgagee may pay for examination of title to, or for surveying, the mortgaged property, all of which sums, including said attorney's fees, Mortgagor agrees to pay, and the same are hereby declared a lien upon said property and are secured hereby.

Third: Performance of every obligation, covenant, promise or agreement herein contained, direct or conditional, and repayment as herein provided of all sums advanced or expended by Mortgagee under the terms hereof.

A. 1. Mortgagor agrees to pay, when due, all taxes, assessments and incumbrances, which are or appear to be liens upon said property or any part thereof, including taxes, if any levied under the law of said State, upon this mortgage or the debt secured hereby, and hereby waives all right to treat payment of such taxes as a payment on such debt or as being to any extent a discharge thereof; Mortgagor also agrees to keep said buildings insured against fire, to the amount required by, and in insurance companies satisfactory to Mortgagee, and to assign the policies therefor to Mortgagee; and promptly to pay and settle (or cause to be removed by suit or otherwise) all adverse claims against said property.

2. In case said taxes, assessments, or incumbrances so agreed to be paid by Mortgagor be not so paid, or said buildings so insured and said policies so assigned, or said adverse claims so paid, settled or removed, then Mortgagee, being hereby made sole judge of the legality thereof, may, without notice to Mortgagor, pay such taxes, assessments or incumbrances, obtain such policies of insurance and

pay or settle or cause to be removed by suit or otherwise all such adverse claims.

3. In the event of loss under said policies of fire insurance, the amount collected thereon shall be credited first to interest then due upon said indebtedness, next upon any advances secured hereby and the remainder, if any, may, at the option of Mortgagee, be applied and credited upon principal, in which case interest shall thereupon cease on the amount so credited on principal; or at the option of Mortgagee, said remainder may be released to Mortgagor for the purpose of making repairs or improvements upon said property, in which case Mortgagee shall not be obliged to see to the application of the sum so released, nor shall said remainder be deemed a payment of any indebtedness secured hereby.

B. Mortgagor agrees to keep said property in good condition and repair and to permit no waste thereof, and should said property, or any part thereof, require any inspection, repair, cultivation, irrigation, protection, care or attention of any kind or nature not provided by Mortgagor, then Mortgagee, being hereby made sole judge of the necessity therefor, may, without notice to Mortgagor, enter, or cause entry to be made upon said property, and inspect, repair, cultivate, irrigate, fertilize, fumigate, protect, care for, or maintain said property as Mortgagee may deem necessary. All sums expended by Mortgagee in doing any of the things in this mortgage authorized are secured hereby and shall be paid to Mortgagee by Mortgagor in said gold coin, on

demand, with interest from date of expenditure at the rate named in the promissory note secured hereby. [286]

C. In consideration of the indebtedness evidenced by said promissory note, Mortgagor waives all right either to apply for, or to procure, registration of said property or any part thereof under the provisions of the "Land Title Law," and hereby agrees:

1. That to bring said property or any part thereof under the operation of said law would impair the security of this obligation;

2. That Mortgagor will not cause or permit any part of said property to be brought under the operation of said law;

3. That if, at any time, the owner of any part of said property shall file a petition for registration, or if any part of said property be registered under the provisions of said law, filing such petition for registration, or such registration shall each constitute a default in performance of the covenants and agreements herein contained on the part of Mortgagor, and the whole sum of money secured by this mortgage shall, at the option of the holder of said promissory note, become immediately due and Mortgagee may proceed to foreclose this mortgage in accordance with its terms.

D. The maker thereof promises to pay said promissory note according to its terms and conditions, and in case of default in payment of principal or interest, when due, or in payment of any other money herein agreed to be paid, or in per-

formance of any covenant or agreement herein contained on the part of Mortgagor, the whole sum of money then secured by this mortgage shall, at the option of the holder of said promissory note, become immediately due and this mortgage may thereupon, or at any time during such default, be foreclosed, and filing of a complaint in foreclosure shall be conclusive notice of the due exercise of such option.

E. In the event of foreclosure, the decree may provide that the property therein described be ordered sold en masse, or in separate parcels, at the option of plaintiff in such action.

F. It is hereby agreed, as part of the security of Mortgagee, that if default should be made in payment of the principal of said promissory note, or in payment of any interest thereon when due, or in any other payment in this mortgage provided, or in any covenant or agreement herein provided to be performed by Mortgagor, then, and in each such case Mortgagee, without limitation or restriction by any present or future law, shall have the absolute right, upon commencement of any judicial proceeding to enforce any right under this mortgage, including foreclosure thereof, to appointment of a receiver of the property hereby mortgaged and of the revenues, rents, profits and other income thereof, and that said receiver shall have (in addition to such other powers as the court making such appointment may confer), full power to collect all such income and after paying all necessary expenses of such receivership and of operation, main-

tenance and repair on said property, to apply the balance to payment of any sums then due hereunder.

G. Mortgagor agrees that Mortgagee may at any time, without notice, and without affecting the personal liability of any person for payment of indebtedness hereby secured, or the lien of this mortgage upon the remainder of the mortgaged property for the unpaid portion of said indebtedness, release any part of said mortgaged property from the lien of this mortgage.

H. Every covenant, stipulation, promise and agreement herein shall bind and inure to the benefit of Mortgagor and Mortgagee and their respective successors in interest.

I. In this mortgage, whenever the context so requires, the masculine gender includes the feminine, the singular number includes the plural, and the words "Promissory Note" include all promissory notes or other evidences of indebtedness secured hereby.

It is stipulated and agreed, by and between the parties hereto, their successors and assigns, that all fire insurance upon the mortgaged premises, as provided for in paragraph "Third A 1" herein, shall be procured through the agency of C. E. Toberman Company, 6763 Hollywood Boulevard, Hollywood, Calif.

Witness the hands and seal of Mortgagors.

STANLEY S. ANDERSON
MARGUERITE S. ANDERSON
Beverly Hills, Calif. [287]

State of California,
County of Los Angeles.—ss.

On this 1st day of November, 1924, before me, Norma D. Swan, a Notary Public in and for said County, personally appeared Stanley S. Anderson and Marguerite S. Anderson known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

WITNESS my hand and official seal.

[Notarial Seal] NORMA D. SWAN

Notary Public in and for the County of Los Angeles, State of California.

My Commission expires Dec. 20, 1927.

MORTGAGE

Individual

Stanley S. & Marguerite S. Anderson

to

Hollywood Holding & Development Corporation

Dated November 1, 1924.

Title Insurance and Trust Company
Title Insurance Building
Los Angeles, California
Order No. 2636

When recorded please mail to Hollywood Holding & Development Corp., 6763 Hollywood Blvd., Hollywood, Calif.

Compared. Document, Newman. Book, Eads.

Recorded Nov 5 1924 15 min. past 1 P. M. in Book 4156 at Page 355 of Official Records, Los

Angeles County, Cal. C. L. Logan, County Recorder.

Recorded at request of Mortgagee.

I certify that I have correctly transcribed this document in the above mentioned book. H. E. Olmstead, Copyist, County Recorder's Office, L. A. Co., Cal. 2.30/18 #107 [288]

$20,000.00

Los Angeles, California, November 1, 1924

Three (3) years after date, for value received, I, We, or either of us promise to pay to HOLLYWOOD HOLDING & DEVELOPMENT CORPORATION or order, at 6763 Hollywood Boulevard, Hollywood, California, the sum of Twenty Thousand and no/100 Dollars, with interest thereon from date hereof, until paid, at the rate of seven (7) per cent. per annum, payable quarterly. Should interest not be so paid, it shall become part of the principal and thereafter bear like interest therewith. Should default be made in payment of interest when due, the whole sum of principal and interest shall, at the option of the holder of this note, become immediately due. Principal and interest payable in United States gold coin. This note is secured by a mortgage upon real property.

STANLEY S. ANDERSON
MARGUERITE S. ANDERSON
Beverly Hills Hotel
" " Calif.

The makers of this note reserve the right to pay the entire principal hereof at any time prior to maturity by paying in addition thereto ninety (90) days unearned interest, together with the accrued interest to date of such payment. Such accrued and bonus interest, added to interest already paid, not to exceed interest for entire period of note. [289]

Interest paid to August 1, 1925.

Pay to Commercial Building and Finance Corporation, without recourse.

Hollywood Holding and Development Corp.
C. E. Toberman Pres.
Parker V. Foster Secy.

Endorsement on interest 11/25 1925 $350.00 to 11-1 1925.

Interest Paid to 11-1-25.

Pay to Hugo C. Boorse & Gerda Winner Boorse, as joint tenan*st* with right of survivorship. Without recourse.

Commercial Building and Finance Corp.
C. E. Toberman Pres.
E. D. Dietz, Secy.

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun. 14, 1932. [290]

PETITIONER'S EXHIBIT 33.

State of California,
County of Los Angeles—ss.

On this 13th day of March, A. D. 1926, before me, Mary I. South, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Mary Sturdy, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] MARY I. SOUTH

Notary Public in and for said County and State.

[291]

SATISFACTION OF MORTGAGE

The SECURITY TRUST & SAVINGS BANK, a corporation duly organized and existing under the laws of the State of California, and having its principal place of business in the City of Los Angeles, County of Los Angeles and MARY STURDY, a widow, do hereby certify and declare that a certain mortgage, bearing date the 29th day of February, 1924, made and executed by STANLEY S. ANDERSON and MARGUERITE S. ANDERSON, Mortgagors, to MARY STURDY, a widow, Mortgagee, and recorded on the 12th day of March, 1924, in Book 3657, Page 337 of Official Records of Los

Angeles County, California, and duly assigned to the said SECURITY TRUST & SAVINGS BANK, by assignment recorded in Book 4206, Page 165 of Official Records of said Los Angeles County, California, on the 28th day of August, 1924, together with the debt thereby secured, is fully paid, satisfied and discharged.

IN WITNESS WHEREOF, The said Security Trust & Savings Bank has caused these presents to be duly signed by its Vice-President and Assistant Secretary and has caused its corporate seal to be hereunto affixed this 12th day of March, 1926.

[Seal] SECURITY TRUST & SAVINGS BANK,

By E. G. Taylor, Vice-President,

By C. W. Brown, Assistant Secretary.

IN WITNESS WHEREOF, I hereunto set my hand and seal this 13th day of March, 1926.

MARY STURDY

State of California,
County of Los Angeles—ss.

On this 13th day of March, 1926, before me, Mary I. South, a Notary Public in and for said County, residing therein, duly commissioned and sworn, personally appeared E. G. Taylor, known to me to be the Vice-President, and C. W. Brown, known to me to be the Assistant Secretary of the SECURITY TRUST & SAVINGS BANK, the corporation that executed the within and foregoing instrument, known to me to be the persons who executed the

yithin instrument on behalf of the corporation therein named and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] MARY I. SOUTH

Notary Public in and for the County of Los Angeles, States of California.

LR:EB [292]

#36992

SECURITY TRUST & SAVINGS BANK

Los Angeles, Cal.

and

Mary Sturdy

to

Stanley S. Anderson, et ux.

Satisfaction of Mortgage

(Assigned)

Dated March 12, 1926.

1174

Compared: Read by Ginford; Document, Young.

Order No.........................

When recorded please mail this instrument to Stanley S. Anderson, c/o Beverly Hills Hotel, Beverly Hills, Calif.

Recorded Mar. 18, 1926 54 min. past 9 A.M. in Book 5647 at page 62 of Official Records, Los Angeles County, Cal. C. L. Logan, County Recorder.

Recorded at request of Mortgagor.

I certify that I have correctly transcribed this

document in above mentioned book. L. Treuhauser, Copyist, County Recorder's Office, L. A. Co., Cal. #159 20/6 [293]

THIS MORTGAGE, Made February 29, 1924, By Stanley S. Anderson and Marguerite S. Anderson, husband and wife, hereinafter called Mortgagor, to Mary Sturdy, a widow, hereinafter called Mortgagee,

WITNESSETH: That Mortgagor hereby mortgages to Mortgagee the real property in the City of Beverly Hills, County of Los Angeles, State of California, described as follows:

Lot Four (4) in Block Three (3) of Beverly, as per map recorded in Book 11, Page 94 of Maps in the office of the County Recorder of Los Angeles County.

including all buildings and improvements thereon (or that may hereafter be erected thereon); together with all and singular the tenements, hereditaments and appurtenances, water and water rights, pipes, flumes, ditches and other rights thereunto belonging or in any wise now or hereafter appertaining thereto, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. [294]

For the purpose of securing

First: Payment of the indebtedness evidenced by a promissory note (and any renewal or extension thereof) in form as follows:

Los Angeles, California,
$14,000.00 February 29, 1924

Two years after date, for value received, We, jointly and severally promise to pay to Mary Sturdy, a widow, or order, at Beverly Hills, California, the sum of Fourteen Thousand and 00/000 Dollars, with interest thereon from date until paid, at the rate of seven per cent. per annum, payable quarterly. Should interest not be so paid, it shall become part of the principal and thereafter bear like interest therewith. Should default be made in payment of interest when due, the whole sum of principal and interest shall, at the option of the holder of this note, become immediately due. Principal and interest payable in United States gold coin. This note is secured by a mortgage upon real property.

(Signed) STANLEY S. ANDERSON.
MARGUERITE S. ANDERSON

U.S.I.R.S. $2.80 affixed and cancelled.

The principal can be paid at any time before maturity by paying ninety (90) days unearned interest premium.

Second: Payment of attorney's fees, in a reasonable sum to be fixed by the Court and all costs and expenses in any action brought to foreclose this mortgage or in any action or proceeding affecting the rights either of Mortgagor or Mortgagee in said real property, whether such action or proceeding progress to judgment or not; also such sums as Mortgagee may pay for examinination of title to,

or for surveying, the mortgaged property, all of which sums, including said attorney's fees, Mortgagor agrees to pay, and the same are hereby declared a lien upon said property and are secured hereby.

Third: Performance of every obligation, covenant, promise or agreement herein contained, direct or conditional, and repayment as herein provided of all sums advanced or expended by Mortgagee under the terms hereof.

A. 1. Mortgagor agrees to pay, when due, all taxes, assessments and incumbrances, which are or appear to be liens upon said property or any part thereof, including taxes, if any levied under the law of said State, upon this mortgage or the debt secured hereby, and hereby waives all right to treat payment of such taxes as a payment on such debt or as being to any extent a discharge thereof; Mortgagor also agrees to keep said buildings insured against fire, to the amount required by, and in insurance companies satisfactory to Mortgagee, and to assign the policies therefor to Mortgagee; and promptly to pay and settle (or cause to be removed by suit or otherwise) all adverse claims against said property.

2. In case said taxes, assessments, or incumbrances so agreed to be paid by Mortgagor be not so paid, or said buildings so insured and said policies so assigned, or said adverse claims so paid, settled or removed, then Mortgagee, being hereby made sole judge of the legality thereof, may, without notice to Mortgagor, pay such taxes, assessments or in-

cumbrances, obtain such policies of insurance and pay or settle or cause to be removed by suit or otherwise all such adverse claims.

3. In the event of loss under said policies of fire insurance, the amount collected thereon shall be credited first to interest then due upon said indebtedness, next upon any advances secured hereby and the remainder, if any, may, at the option of Mortgagee, be applied and credited upon principal in which case interest shall thereupon cease on the amount so credited on principal; or at the option of Mortgagee, said remainder may be released to Mortgagor for the purpose of making repairs or improvements upon said property, in which case Mortgagee shall not be obliged to see to the application of the sum so released, nor shall said remainder be deemed a payment of any indebtedness secured hereby.

B. Mortgagor agrees to keep said property in good condition and repair and to permit no waste thereof, and should said property, or any part thereof, require any inspection, repair, cultivation, irrigation, protection, care or attention of any kind or nature not provided by Mortgagor, then Mortgagee, being hereby made sole judge of the necessity therefor, may, without notice to Mortgagor, enter, or cause entry to be made upon said property, and inspect, repair, cultivate, irrigate, fertilize, fumigate, protect, care for, or maintain said property as Mortgagee may deem necessary. All sums expended by Mortgagee in doing any of the things in this

mortgage authorized are secured hereby and shall be paid to Mortgagee by Mortgagor in said gold coin, on demand, with interest from date of expenditure at the rate named in the promissory note secured hereby. [295]

C. In consideration of the indebtedness evidenced by said promissory note, Mortgagor waives all right either to apply for, or to procure, registration of said property or any part thereof under the provisions of the "Land Title Law," and hereby agrees:

1. That to bring said property or any part thereof under the operation of said law would impair the security of this obligation;

2. That Mortgagor will not cause or permit any part of said property to be brought under the operation of said law;

3. That if, at any time, the owner of any part of said property shall file a petition for registration, or if any part of said property be registered under the provisions of said law, filing such petition for registration, or such registration shall each constitute a default in performance of the covenants and agreements herein contained on the part of Mortgagor, and the whole sum of money secured by this mortgage shall, at the option of the holder of said promissory note, become immediately due and Mortgagee may proceed to foreclose this mortgage in accordance with its terms.

D. The maker thereof promises to pay said promissory note according to its terms and condi-

tions and in case of default in payment of principal or interest, when due, or in payment of any other money herein agreed to be paid, or in performance of any covenant or agreement herein contained on the part of Mortgagor, the whole sum of money then secured by this mortgage shall, at the option of the holder of said promissory note, become immediately due and this mortgage may thereupon, or at any time during such default, be foreclosed, and filing of a complaint in foreclosure shall be conclusive notice of the due exercise of such option.

E. In the event of foreclosure, the decree may provide that the property therein described be ordered sold en masse, or in separate parcels, at the option of plaintiff in such action.

F. It is hereby agreed, as part of the security of Mortgagee, that if default should be made in payment of the principal of said promissory note, or in payment of any interest thereon when due, or in any other payment in this mortgage provided, or in any covenant or agreement herein provided to be performed by Mortgagor, then, and in each such case Mortgagee, without limitation or restriction by any present or future law, shall have the absolute right, upon commencement of any judicial proceeding to enforce any right under this mortgage, including foreclosure thereof, to appointment of a receiver of the property hereby mortgaged and of the revenues, rents, profits and other income thereof, and that said receiver shall have (in addition to such

other powers as the court making such appointment may confer), full power to collect all such income and after paying all necessary expenses of such receivership and of operation, maintenance and repair of said property, to apply the balance to payment of any sums then due hereunder.

G. Mortgagor agrees that Mortgagee may at any time, without notice, and without affecting the personal liability of any person for payment of indebtedness hereby secured, or the lien of this mortgage upon the remainder of the mortgaged property for the unpaid portion of said indebtedness, release any part of said mortgaged property from the lien of this mortgage.

H. Every covenant, stipulation, promise and agreement herein shall bind and inure to the benefit of Mortgagor and Mortgagee and their respective successors in interest.

I. In this mortgage, whenever the context so requires, the masculine gender includes the feminine, the singular number includes the plural, and the words "Promissory Note" include all promissory notes or other evidences of indebtedness secured hereby.

WITNESS: the hand and seal of Mortgagor.

STANLEY S. ANDERSON
MARGUERITE S. ANDERSON [296]

State of California,
County of Los Angeles—ss.

On this 6th day of March, 1924, before me, M. C. Bond, a Notary Public in and for said County,

personally appeared Stanley S. Anderson and Marguerite S. Anderson, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

WITNESS my hand and official seal.

[Seal] M. C. BOND

Notary Public in and for the County of Los Angeles. State of California.

My commission expires August 28, 1926.

36992

MORTGAGE

Individual

Stanley S. Anderson, et ux.

Dated February 29, 1924.

TITLE INSURANCE AND TRUST COMPANY

Title Insurance Building

Los Angeles, California

275

Order No. 737698

When recorded please mail to Beverly State Bank, Beverly Hills, California.

Compared: Document, Frazier; Book, Lloyd.

Escrow #658.

Recorded at request of Title Insurance & Tr. Co., Mar. 12, 1924 at 8:30 A. M. in Book 3657, Page 337 of Official Records, Los Angeles County, Cal. C. L. Logan, County Recorder.

I certify that I have correctly transcribed this document in above mentioned book. A. Bradley,

Copyist, County Recorder's Office, L. A. Co., Cal.
2.20/17

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun 14, 1932. [297]

PETITIONER'S EXHIBIT 34.

4-Escrow #7907-JEM Copy

THIS MORTGAGE, Made the 28th day of August, 1926.

By CHARLES H. CHRISTIE, a single man, and STANLEY S. ANDERSON and MARGUERITE S. ANDERSON, his wife, hereinafter called the Mortgagor, to the SECURITY TRUST & SAVINGS BANK, a corporation duly organized under the laws of the State of California, and having its principal place of business at the City of Los Angeles, California (which fact is hereby expressly admitted), Mortgagee;

WITNESSETH: That the Mortgagor hereby mortgages to the Mortgagee all that certain real property, situate in the City of and County of Los Angeles, State of California, and particularly described as follows:

That portion of the Subdivision of the Rancho San Jose de Buenos Ayres, as per map recorded in Book 26, Pages 19 to 25 inclusive, Miscellaneous Records of said County, described as follows:—

Beginning at a point in the Northwesterly line of the Pacific Electric Railway right of way, as shown on the map of Tract Number Fifty-six Hundred Nine (5609), recorded in Book 76, Pages 68 to 71

of Maps, Records of said County, distant North Seventy-one (71 degrees), Thirty-three (33) minutes, twenty (20″) seconds East Three Hundred Fifty and four hundredths (350.04) feet from the intersection of said Northwesterly line with the south easterly prolongation of the North-easterly line of Tract Number Seventy-five Hundred Fourteen (7514), as per map recorded in Book 80, Pages 81 and 82 of said Map Records; thence North Thirty-five (35) degrees, Thirty-eight (38′) minutes, twenty (20″) seconds West One Thousand Six Hundred Twenty-two and four hundredths (1622.04) feet; thence North Fifty-two (52) degrees, six (06′) minutes, thirty-six (36″) seconds East Six Hundred Thirty-six and nine hundredths, (636.09) feet; thence North Fifty-four (54) degrees, twenty-one (21′) minutes, forty (40″) seconds East One Hundred Sixty-five (165) feet; thence South Thirty-five (35) degrees, thirty-eight (38′) minutes, twenty (20″) seconds East Four Hundred Thirty (430) feet; thence North Fifty-four (54) degrees, twenty-one (21′) minutes, forty (40″) seconds East One Hundred Sixty (160) feet to a point in the center line of Westwood Boulevard, as shown on the map of said Tract number Seventy Eight Hundred Three (7803), Sheets 1 and 2, recorded in Book 85, Pages 59 and 60 of said Map Records; thence South Thirty-five (35) degrees, Thirty-eight (38′) minutes, twenty (20″) seconds East One Thousand Five Hundred Fourteen and twenty-eight hundredths (1514.28) feet to a point in the Northwesterly line of said

Pacific Electric Railway right of way; thence along said Northwesterly line, South Seventy-one (71) degrees, Thirty-three (33′) minutes, twenty (20″) seconds West One Thousand and five and fifty-five hundredths (1005.55) feet to point of beginning.

EXCEPTING therefrom that portion lying Northeasterly of a line parallel with and distant southwesterly twenty (20) feet from the southwesterly line of Westwood Boulevard.

ALSO EXCEPTING therefrom the southwesterly thirty (30) feet thereof. [298]

Including all buildings and improvements thereon or that may be erected thereon; together with all and singular the tenements, hereditaments and appurtenances, easements, right-of-ways, water and water rights, wells, pumping stations, engines and appliances, pipes, flumes and ditches thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; for the purpose of securing the faithful performance of all the covenants, agreements and conditions herein set forth, and the performance of the promises and obligations of this mortgage and payment of the indebtedness evidenced by one promissory note (and any renewal or extension thereof) in words and figures as follows:

Los Angeles, California,

$150,000.00 August 28th, 1926.

Three (3) years after date, and for value received, I promise to pay to the SECURITY TRUST

& SAVINGS BANK of Los Angeles, or order at its Hollywood Branch, Hollywood Boulevard and Cahuenga Avenue, in the City of Los Angeles, California, the sum of One Hundred Fifty Thousand and no/100 ($150,000.00) Dollars, with interest from August 28th, 1926 until paid at the rate of Seven (7) per cent. per annum, payable quarterly. Should the interest not be so paid, it shall become part of the principal and thereafter bear like interest as the principal. Should default be made in the payment of any installment of interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Principal and interest payable in Gold Coin of the United States of the present standard. This note is secured by a mortgage of even date herewith upon real property.

(Signed) CHARLES H. CHRISTIE
(Signed) STANLEY S. ANDERSON
(Signed) MARGUERITE S. ANDERSON

Revenue Stamps in the amount of
$..................................affixed and cancelled.

The Mortgagor agrees to pay, as soon as due, all taxes, assessments and incumbrances, which may be, or appear to be, liens upon said property or any part thereof, including taxes levied or assessed upon this mortgage or upon the debt secured hereby, and hereby waives all right to treat the payment of such taxes or assessments as a payment on the debt hereby secured or as being to any extent a discharge thereof; and the Mortgagor agrees to keep said

buildings insured against fire, to the amount required by and in such insurance companies as may be satisfactory to the Mortgagee, and to assign the policies therefor to the Mortgagee; and to pay and settle promptly (or cause to be removed by suit or otherwise) all adverse claims against said property.

In case said taxes, assessments or incumbrances so agreed to be paid by the Mortgagor be not so paid, or said buildings so insured, and said policies so assigned, or said adverse claims so paid, settled or removed, then the Mortgagee, being hereby made the sole judge of the legality thereof, may, without notice to the Mortgagor, pay such taxes, assessments, or incumbrances, obtain such policies of insurance in its own name as Mortgagee, and pay or settle any or all such adverse claims or cause the same to be removed by suit or otherwise.

In the event of a loss under said policies of fire insurance, the amount collected thereon shall be credited, at the option of the holder of this mortgage; first, either to the interest due, if any, upon said indebtedness, and the remainder, if any, upon the principal sum, and interest shall thereupon cease on the amount so credited on said principal sum, or second, to be used in replacing or restoring the improvements partially or totally damaged, to a condition satisfactory to said Mortgagee.

The Mortgagor agrees to keep said property in good condition and repair and to permit no waste thereof, and should said property, or any part thereof, require any inspection, repair, cultivation,

irrigation or protection, other than that provided by the Mortgagor, then the Mortgagee, being hereby made the sole judge of the necessity thereof, and without notice to the Mortgagor, may enter, or cause entry to be made, upon said property, and inspect, repair, cultivate, irrigate or protect said property as it may deem necessary.

All sums expended by the Mortgagee in doing any or all of the things authorized in this mortgage, shall be secured hereby and shall be paid to the Mortgagee by the Mortgagor in said gold coin, on demand, together with interest from the date of payment, at the same rate of interest (compounded monthly until repaid) as is provided to be paid in the note hereinbefore set out.

The Mortgagor promises to pay said note according to the terms and conditions thereof; and in case of default in the payment of the same, or of any installment of interest thereon when due, or in the performance of any of the covenants or agreements herein contained on the part of the Mortgagor, the whole sum of money then secured by this mortgage shall become immediately due and payable at the option of the holder of said note, and this mortgage may thereupon, or at any time during such default, be foreclosed, and the filing of the complaint in foreclosure shall be conclusive of the exercise of such option by the Mortgagee without any other or further notice thereof to said Mortgagor.

In case any action be brought to foreclose this mortgage, or the Mortgagee institute, intervene, join

or defend any action affecting this mortgage or the property securing the same or any of its rights as such Mortgagee, then and in any or all of such cases, the Mortgagor agrees to pay all costs and expenses thereof, including a reasonable sum, to be fixed by the Court, as attorney's fees, whether suit progress to judgment or not; also such sums as the Mortgagee may pay for searching the title to the mortgaged property subsequent to the date of record of this mortgage, or for surveying said property and said attorney's fees; and all sums so paid or expended shall become due upon filing of the complaint, or appearing in any such action, shall be secured hereby, and shall be repaid to the Mortgagee in said gold coin.

In any such action to foreclose this mortgage, a Receiver shall, upon application of the plaintiff therein and as a matter of right, and without notice to the Mortgagor, be appointed by the Court to take charge of said property, to receive and collect the rents, issues and profits thereof, and apply them to the payment of the taxes, which may be due or become due during the pendency of this action and until sale be finally made, the costs, commissions of the receiver and his attorney's fees, in a reasonable sum to be fixed by the Court, and any deficiency on the obligations secured by this mortgage which may remain after the property shall have been sold and the proceeds thereof applied on the judgment secured in such foreclosure. [299]

It is also agreed that should this mortgage be foreclosed, then in the decree of foreclosure entered

in such action, the property described therein may be ordered sold en masse—or as one lot or parcel—and not as several parcels, at the exclusive option of the Mortgagee.

And also that the Mortgagee may at any time, without notice, release portions of said mortgaged premises from the lien of this mortgage without affecting the personal liability of any person for the payment of the said indebtedness or the lien of this mortgage upon the remainder of the mortgaged premises, for the full amount of said indebtedness then remaining unpaid.

This mortgage and the debt secured thereby may be satisfied and discharged at any time after one year from date hereof, and before maturity, upon payment of principal, accrued interest to date of payment, advances, if any, and ninety days' unearned interest, provided there is then existing no default of any of the terms and provisions of this mortgage or the note which it secures.

The Mortgagor also hereby covenants and agrees that if, during the life of this mortgage, proceedings be instituted for the registration of the hereinabove described land under the "Land Title Law," approved by the electors of California, and in effect December 19th, 1914, and any amendments thereof, or any other law governing the registration of titles to land, the Mortgagor will pay any sum or sums expended by the Mortgagee or its assigns in protecting its interests under this mortgage, including a reasonable attorney's fee, whether appearance be made in the action or proceeding to so register said

land or not, the said Mortgagee and its assigns being hereby made the sole judge of the necessity of incurring said expense and attorney's fee, and of the amount thereof. Any and all certificates or other evidence of title to said property shall be forthwith delivered to the Mortgagee to be held by it during the life of this mortgage.

In this instrument the masculine gender includes the feminine, and the singular number includes the plural whenever the context so requires; the words "Promissory Note" include all promissory notes or other evidence of indebtedness hereinbefore set forth for which this mortgage is intended to be security.

It is understood that there are no agreements or promises as to this mortgage, except as herein stated.

The Mortgagor also hereby mortgages the property hereinbefore described, to secure every promise and agreement therein contained, direct or conditional, and guarantees and affirms that said property is now free from any secret equities, trusts or incumbrances made or suffered by, or known to, said Mortgagor.

Every stipulation, agreement and appointment herein in favor of said Mortgagee, shall apply and inure to the benefit of its successors or assigns.

WITNESS: The hands and seals of said Mortgagor the day and year first above written.

(Signed) CHARLES H. CHRISTIE [Seal]
(Signed) STANLEY S. ANDERSON [Seal]
(Signed) MARGUERITE S. ANDERSON [Seal]

State of California,
County of Los Angeles—ss.

On this fourth day of September, 1926, before me, Claude Hill, a Notary Public in and for said County, residing therein, duly commissioned and sworn, personally appeared Stanley S. Anderson, known to me to be the person whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Signed) CLAUDE HILL

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires April 21, 1928. [300]

MORTGAGE
Individual

....

....

to

Security Trust & Savings Bank
Los Angeles, Calif.

Dated..

Order No.............................

When recorded please mail this instrument to Hollywood Branch, Security Trust & Savings Bank, Hollywood Blvd., and Cahuenga Ave., Los Angeles, Calif.

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun 14, 1932. [301]

PETITIONER'S EXHIBIT 35.

FULL RECONVEYANCE

THIS INDENTURE, Made this 5th day of September, A. D. 1925.

WITNESSETH: That whereas the indebtedness secured by a certain Deed of Trust made by Stanley S. Anderson and wife, to the TITLE GUARANTEE AND TRUST COMPANY, dated the 6th day of December, 1922, and recorded in Book 1799, page 290, of Official Records of the County of Los Angeles, State of California, has been fully paid, and it is desired to cancel and discharge the record thereof:

NOW THEREFORE, in consideration of such payment and the receipt of the fees for the execution of this release deed and at the request of the holder of the notes mentioned in said Deed of Trust, the TITLE GUARANTEE AND TRUST COMPANY does hereby remise, release and reconvey without warranty unto the holder or holders of the legal title when the Deed of Trust was executed and for the benefit of those who lawfully succeed thereto all the estate in the property described in said Deed of Trust and in said Deed of Trust granted and now held by said TITLE GUARANTEE AND TRUST COMPANY, reference being made to the record of said Deed of Trust for a particular description of said property, this conveyance being given as a full satisfaction and discharge of said Trust.

IN WITNESS WHEREOF, the said TITLE

GUARANTEE AND TRUST COMPANY has caused the corporate name to be signed to these presents by its Vice-President and attested by its Secretary, who has affixed its Seal, the day and year first above mentioned.

[Seal] TITLE GUARANTEE AND TRUST COMPANY.

By E. W. L. Franklin

Vice-President.

Attested A. R. Killgore

Secretary. [302]

State of California,
County of Los Angeles—ss.

On this 5th day of September, in the year 1925, before me John Floyd, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and qualified, personally appeared E. W. L. Franklin, known to me to be the Vice-President, and A. R. Killgore, known to me to be the Secretary of the TITLE GUARANTEE AND TRUST COMPANY, the Corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate above written.

[Seal] JOHN FLOYD

Notary Public in and for Los Angeles County, State of California.

FULL RECONVEYANCE
Title Guarantee and Trust Company
to

....

....

Title Guarantee and Trust Company
Paid up Capital and Surplus over
Four Million Five Hundred Thousand Dollars
Broadway at Fifth Street
Los Angeles, California
Order No. 599493 445

When recorded please mail this instrument to Beverly Hills Branch, Security Trust & Savings Bank, Beverly Hills, Calif.

Escrow #1719

Compared: Document, West; Book, Easton.

Recorded at request of Title Guarantee & Tr. Co., Dec. 9, 1925, at 8:30 A.M., in Book 4557, Page 61 of Official Records, Los Angeles County, Cal. C. L. Logan, County Recorder.

I certify that I have correctly transcribed this document in above mentioned book. M. Grogan, Copyist, County Recorder's Office, L. A. Co., Cal. 90/5

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun 14, 1932. [303]

PETITIONER'S EXHIBIT 36.

FULL RECONVEYANCE.

Know All Men by These Presents:

THAT WHEREAS, Title Insurance and Trust Company, a corporation having its principal place

of business at Los Angeles, California, Trustee under Deed of Trust executed by STANLEY S. ANDERSON and MARGUERITE S. ANDERSON, Trustors and recorded November 5th, 1924 in Book 4269, Page 233 of Official Records in the office of the County Recorder of Los Angeles County, California, has, by reason of the payment of the indebtedness secured by said Deed of Trust, been duly requested and directed to reconvey without warranty, to the parties designated by the terms of said Deed of Trust, all right, title and interest now held by said Trustee under and by virtue of said Deed of Trust in and to the property therein described.

NOW THEREFORE, In Compliance with said request and direction, and in consideration of the sum of One Dollar, receipt of which is hereby acknowledged, and the payment of said indebtedness, said Trustee does hereby RECONVEY to the Person or Persons Legally Entitled Thereto, but without warranty, all right, title and interest now held by said Trustee under and by virtue of said Deed of Trust in and to the property therein described.

IN WITNESS WHEREOF, said Title Insurance and Trust Company, as Trustee, has caused its corporate name and seal to be hereto affixed by its Vice-President and Assistant Secretary, thereunto duly authorized, this 9th day of December, 1925.

[Seal] TITLE INSURANCE AND
TRUST COMPANY, Trustee.
By L. J. Beynon
I.S. Vice-President.
By C. M. Sperry,
Assistant Secretary.

State of California,
County of Los Angeles—ss.

On this 9th day of December, 1925, before me, P. L. Bishop, a Notary Public in and for said County, personally appeared L. J. Beynon, known to me to be the Vice-President, and C. M. Sperry, known to me to be the Assistant Secretary of Title Insurance and Trust Company, Trustee, the corporation that executed the foregoing instrument, and known to me to be the persons who executed the same on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same as such Trustee.

WITNESS my hand and official seal.

[Seal] P. L. BISHOP

Notary Public in and for said County of Los Angeles, State of California. [304]

FULL RECONVEYANCE
of Property covered by Deed of Trust
No. 78402
from
Title Insurance and Trust Company
Trustee
to

....

....

Dated December 9th, 1925.
Title Insurance and Trust Company
Title Insurance Building
Los Angeles, California

Hollywood Holding & Dev. Corp., 6763 Hollywood Blvd., Hollywood, California.

Order No.......................... 1230

When recorded please return this instrument to..........

Compared: Record, Anderson; Document, L. C. Brown.

Recorded Dec 11, 1925 9 min. past 10 A.M., in Book 5703 at Page 60 of Official Records, Los Angeles County, Cal. C. L. Logan, County Recorder.

Recorded at request of Grantee.

I certify that I have correctly transcribed this document in above mentioned book. L. Knutsen, Copyist, County Recorder's Office, L. A. Co., Cal. 90/4

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun 14, 1932. [305]

PETITIONER'S EXHIBIT 37.

FULL RECONVEYANCE

THIS INDENTURE, Made this 25th day of January, A. D. 1926.

WITNESSETH: That whereas the indebtedness secured by a certain Deed of Trust made by Stanley S. Anderson and Marguerite S. Anderson to the TITLE GUARANTEE AND TRUST COMPANY, dated the 31st day of January, 1924, and recorded in Book 3673, page 232, of Official Records of the County of Los Angeles, State of California, has been fully paid, and it is desired to cancel and discharge the record thereof:

NOW THEREFORE, in consideration of such payment and the receipt of the fees for the execution of this release deed and at the request of the holders of the notes mentioned in said Deed of Trust, the TITLE GUARANTEE AND TRUST COMPANY does hereby remise, release and reconvey without warranty unto the holder or holders of the legal title when the Deed of Trust was executed and for the benefit of those who lawfully succeed thereto all the estate in the property described in said Deed of Trust and in said Deed of Trust granted and now held by said TITLE GUARANTEE AND TRUST COMPANY, reference being made to the record of said Deed of Trust for a particular description of said property, this conveyance being given as a full satisfaction and discharge of said Trust.

IN WITNESS WHEREOF, the said TITLE GUARANTEE AND TRUST COMPANY has caused the corporate name to be signed to these presents by its Vice-President and attested by its Secretary, who has affixed its Seal, the day and year first above mentioned.

[Seal] TITLE GUARANTEE AND TRUST COMPANY.

By E. W. L. Franklin
Vice-President.

Attested A. R. Killgore
Secretary.

The undersigned owners of the notes secured by the Deed of Trust mentioned in the foregoing re-

lease deed, hereby request the execution and delivery of this release deed, being in full discharge of said Trust.

Leland P. Ruder, L.P.R.
O. N. Beasley O.N.B.
Beverly Investment Co. (Dissolved)
By G. H. Beekman, Trustee. [306]

State of California,
County of Los Angeles—ss.

On this 17th day of September, in the year 1926, before me E. B. Riggs, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and qualified, personally appeared E. W. L. Franklin, known to me to be the Vice-President, and A. R. Killgore, known to me to be the Secretary of the TITLE GUARANTEE AND TRUST COMPANY, the Corporation that executed the within instrument. known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate above written.

[Seal] E. B. RIGGS,
Notary Public in and for Los Angeles County, State of California.

FULL RECONVEYANCE

Title Guarantee and Trust Company

to

....

....

Title Guarantee and Trust Company

Paid up Capital and Surplus over

Four Million Five Hundred Thousand Dollars

S. E. Cor. Broadway at Fifth Street

Los Angeles, California

69 Order No. 676174

When recorded, please mail this instrument to E. P. Adams, 601 Central Bldg., City.

Compared: Document, Lloyd; Book, Jensen.

Recorded at request of Title Guarantee & Tr. Co., Sep. 18, 1926 at 8:30 A.M. in Book 6350, Page 22 of Official Records, Los Angeles County, Cal. C. L. Logan, County Recorder.

I certify that I have correctly transcribed this document in above mentioned book. I. Mann, #133. Copyist, County Recorder's Office, L. A. Co., Cal. 1.00/5

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun 14, 1932. [307]

PETITIONER'S EXHIBIT 38.

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That we, Stanley S. Anderson and Marguerite S. Anderson, husband and wife, of Los Angeles, County of Los Angeles, State of California have made, con-

stituted and appointed and by these presents do make, constitute and appoint EDWIN JANSS and HAROLD JANSS, or either of them, of Los Angeles, California, our true and lawful attorneys for us and in our names, place and stead, to Grant, Bargain, Convey and Sell all that portion of our real estate, or any part thereof, situated in the said City of Los Angeles, State of California, included within Tract No. 7514, recorded on December 11th, 1923 in Book 80 Pages 81 and 82, Official Records of Los Angeles County, and in Tract No. 7803, recorded February 1st, 1924 in Book 85 Pages 59 and 60, Official Records of Los Angeles County, for such price and on such terms as they, or either of them, shall deem best, and for us and in our names, to make, execute, acknowledge and deliver good and sufficient deeds and conveyances for said property or any part thereof;

Giving and granting unto our said attorneys, or either of them, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully and to all intents and purposes as we might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that our said attorneys, or either of them shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 4th day of February, 1924.

[Signatures Cancelled] [VOID]

State of California,
County of Los Angeles—ss.

On the 4th day of February, 1924, before me M. C. Bond, personally appeared Stanley Anderson and Marguerite S. Anderson, known to me to be the persons who executed the foregoing instrument and they duly acknowledged that they executed the same.

[Seal] M. C. BOND

Notary Public, County of Los Angeles, State of California.

My Commission Expires August 28, 1926. [308]

Janss Inv. Co.

5 & Broadway, L. A.

Return to:

JANSS INVESTMENT COMPANY.

1278

Compared: Document, West; Book, Easton.

Recorded Feb 8, 1924, 6 min. past 11 A.M. in Book 2994 at Page 243 of Official Records, Los Angeles County, Cal. C. L. Logan, County Recorder.

Recorded at request of Appointee.

I certify that I have correctly transcribed this document in above mentioned book. M. S. Rhorer, Copyist, County Recorder's Office, L. A. Co., Cal.

1.00/6 45

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun 14, 1932. [309]

PETITIONER'S EXHIBIT 39.

KNOW ALL MEN BY THESE PRESENTS:

THAT I, Marguerite S. Anderson, of Beverly Hills, California, have made, constituted and appointed, and by these presents do hereby make, constitute and appoint Stanley S. Anderson, my husband, of the same place my true and lawful Attorney for me and in my name, place and stead, and for my use and benefit, to ask, demand, sue for, recover, collect and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities and demands whatsoever, as are now or shall hereafter become due, owing, payable or belonging to me; and have, use and take all lawful ways and means in my name, or otherwise, for the recovery thereof, by legal process, and to compromise and agree for the same, and grant acquittances or other sufficient discharges for the same, for me and in my name, to make, seal and deliver; to bargain, contract, agree for, purchase, receive and take lands, tenements, hereditaments, and accept the seisin and possession of all lands, and all deeds, and other assurances in the law therefor; and to lease, let, demise, bargain, sell, remise, release, convey, mortgage and hypothecate lands, tenements and hereditaments, upon such terms and conditions, and under such covenants as he shall think fit. Also to bargain and agree for, buy, sell, mortgage, hypothecate and in any and every way and manner deal in and with goods, wares and merchandise, choses in action, and other

property in possession or in action; and to make, do and transact all and every kind of business of what nature and kind soever; and, also, for me and in my name, and as my act and deed, to sign, seal, execute, deliver, and acknowledge such deeds, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, bonds, notes, receipts, evidences of debts, releases and satisfaction of mortgage, judgment and other debts, and such other instruments in writing, of whatever kind and nature, as may be necessary or proper in the premises.

GIVING AND GRANTING unto my said Attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present; and hereby ratifying and confirming all that my said Attorney Stanley S. Anderson shall lawfully do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the 27th day of January, A. D. 1925.

MARGUERITE S. ANDERSON [Seal]

Signed, Sealed and Delivered in Presence of

.... [310]

KNOW ALL MEN BY THESE PRESENTS:

THAT I, Marguerite S. Anderson, of Beverly Hills, California, have made, constituted and appointed, and by these presents do hereby make,

constitute and appoint Stanley S. Anderson, my husband, of the same place my true and lawful Attorney for me and in my name, place and stead, and for my use and benefit, to ask, demand, sue for, recover, collect and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities and demands whatsoever, as are now or shall hereafter become due, owing, payable or belonging to me; and have, use and take all lawful ways and means in my name, or otherwise, for the recovery thereof, by legal process, and to compromise and agree for the same, and grant acquittances or other sufficient discharges for the same, for me and in my name, to make, seal and deliver; to bargain, contract, agree for, purchase, receive and take lands, tenements, hereditaments, and accept the seisin and possession of all lands, and all deeds, and other assurances in the law therefor; and to lease, let, demise, bargain, sell, remise, release, convey, mortgage and hypothecate lands, tenements and hereditaments, upon such terms and conditions, and under such covenants as he shall think fit. Also to bargain and agree for, buy, sell, mortgage, hypothecate and in any and every way and manner deal in and with goods, wares and merchandise, choses in action, and other property in possession or in action; and to make, do and transact all and every kind of business of what nature and kind soever; and, also, for me and in my name, and as my act and deed, to sign, seal, execute, deliver, and acknowledge such deeds, coven-

ants, indentures, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, bonds, notes, receipts, evidences of debts, releases and satisfaction of mortgage, judgment and other debts, and such other instruments in writing, of whatever kind and nature, as may be necessary or proper in the premises.

GIVING AND GRANTING unto my said Attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present; and

State of California,
County of Los Angeles—ss.

On this 26th day of March, A. D., 1925, before me M. C. Bond, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Marguerite S. Anderson, known to me to be the person whose name is subscribed to the within Instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] M. C. BOND

Notary Public in and for said County and State.

My Commission Expires August 28, 1926. [311]

POWER OF ATTORNEY

(General.)

Marguerite S. Anderson,

to

Stanley S. Anderson.

Dated January ...., 1925.

Filed for Record at the request of..
....A. D. 19........at................min. past
..................o'clock, of......................................page................ ....M.,
and recorded in Vol................ ....County Records.

....

Recorder.

By...

Deputy Recorder.

1228

When recorded please return to Beverly Hills Branch, Security Trust & Savings Bank of Los Angeles, Beverly Hills, Calif.

Compared. Document, Wicks. Book, McEwen.

Recorded Mar 31 1925 21 min. past 9 A. M. in Book 3921 at Page 288 of Official Records, Los Angeles County, Cal. C. L. Logan, County Recorder.

Recorded at request of Attorney.

I certify that I have correctly transcribed this document in above mentioned book. F. L. Bradbury, Copyist, County Recorder's Office, L. A. Co., Cal. #44. 1.00/6.

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun. 14, 1932. [312]

PETITIONER'S EXHIBIT 40.

Memorandum of Agreement between STANLEY S. ANDERSON and MARGUERITE S. ANDERSON, husband and wife, hereinafter referred to as "Mr. Anderson" and "Mrs. Anderson", respectively,

WITNESSETH:

WHEREAS the parties hereto were married in 1914 and at the time of said marriage neither had any property, and shortly thereafter an agreement was made between them to the effect that all property acquired by either after the date of their marriage, whether separate or community, should be deemed to be and should constitute the property of both of them as tenants in common, each owning an undivided one-half interest therein; and

WHEREAS about this time or shortly thereafter Mrs. Anderson received from her father, as a gift to her, various sums of money aggregating in all approximately $20,000.00, which she turned over to Mr. Anderson when and as received to invest under said agreement; and

WHEREAS Mr. Anderson used said money, together with various earnings of both of them and various property which he received by gift from his mother, and proceeds and avails of all of said property, in purchasing, owning and selling real estate and other property, and for the purpose of convenience has carried the legal title to all property so acquired in his own name, but as trustee for himself and Mrs. Anderson as tenants in common, and said [313] property has at all times consti-

tuted and does now constitute the property of the parties hereto as tenants in common, each owning an undivided one-half interest therein; and

WHEREAS the parties desire to confirm the agreement between themselves hereinbefore referred to and to reduce the same to writing and thenceforward to have the legal title to all real property acquired by them during their said marriage, from whatever source, held in their joint names as tenants in common pursuant to said agreement:

NOW, THEREFORE, it is MUTUALLY AGREED by and between the parties hereto as follows:

1. All property whatsoever, whether separate or community, heretofore or hereafter acquired by either of the parties hereto since and during their marriage and howsoever the legal title thereto may be held, constitutes the property and is owned by them jointly as tenants in common, each owning an undivided one-half interest therein as his and her respective separate property, and none of said property, no matter how the legal title thereto may be held, is or shall be owned in any other way than as tenants in common, each owning an undivided one-half interest therein as his and her respective separate property.

2. Mr. Anderson agrees forthwith to execute to Mrs. Anderson proper deeds of transfer and conveyance conveying to her the legal title to an undivided one-half [314] interest in and to all real property which now stands in his name except that referred to in paragraph 4 hereof, and the parties

hereto agree that all real property hereafter acquired by them or either of them except that of the character referred to in paragraph 4 hereof shall be carried in the joint names of the parties hereto as tenants in common. A description of said real estate is annexed hereto marked Exhibit A and is hereby referred to and made a part hereof.

3. The parties hereto agree that Mr. Anderson shall continue to carry all of the personal property owned by the parties hereto as tenants in common in his own name, as trustee for the parties hereto as tenants in common, with full power, with Mrs. Anderson's written consent first obtained, and not otherwise, to sell, mortgage, exchange, real in or improve the same, and agree that all personal property hereafter acquired by the parties hereto shall, unless otherwise agreed, be carried in the name of Mr. Anderson as like trustee and with like powers. All gains and losses heretofore made have been shared by the parties hereto equally, and all future gains and losses shall continue to be shared by the parties hereto share and share alike. A list of the stocks, bonds and other personal property now owned by the parties hereto and hereinabove referred to is annexed hereto marked Exhibit B and is hereby referred to and made a part hereof.

4. In addition to the property referred to in the [315] above paragraphs 2 and 3, the parties hereto jointly own, as tenants in common, interests in certain syndicates, or deals with the Janss Investment Company and its associated companies, including lot sales contracts, and accounts receivable

in connection therewith, and interests in property jointly with others, all of which has been carried in the name of Mr. Anderson. The parties hereto agree that all of said property interests, except the interests in the said syndicates, shall be continued to be carried in the name of Mr. Anderson, together with any similar interests hereafter acquired, but for the use and benefit of both Mr. and Mrs. Anderson as owners thereof, as tenants in common. The interests of the parties hereto in said syndicates shall thenceforward be carried in the joint names of the parties hereto, and Mr. Anderson agrees to immediately cause the legal title thereto to be transferred to their point names.

STANLEY S. ANDERSON [Seal]
MARGUERITE S. ANDERSON [Seal]
[316]

State of California,
County of Los Angeles.—ss.

On this 8 day of June, A. D., 1932, before me, Frances McCourt, a Notary Public in and for said County and State, personally appeared STANLEY S. ANDERSON and MARGUERITE S. ANDERSON, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] FRANCES McCOURT
Notary Public in and for said County and State.
[317]

EXHIBIT A

REAL ESTATE

Owned by Mr. and Mrs. Anderson, as Tenants in Common

Parcel No.	
1 (Hoagland property)	The SW¼ of the NW¼ of Sec. 4; the S½ of the NW¼ of Sec. 5; the S½ of the NE¼ of Sec. 5; the N½ of the SE¼ of Sec. 6; all in Township 1, S, R 17 W, S.B.M.—except therefrom the N-ly 100 ft. of the SW¼ of the NW¼ of said Sec. 4, situated in the County of Los Angeles, described in Trustee's Deed upon Sale dated Feb. 15, 1932, Security-First National Bank of Los Angeles to Stanley S. Anderson, recorded in Book 11485, at page 84, of Official Records of Los Angeles County.
2 (Arcade)	Lot 4 in Block 3 of Beverly, as per map recorded in Book 11, page 94 of Maps, in the office of the County Recorder of Los Angeles County, as described in Grant Deed dated March 5, 1924, J. R. Moulthrop to Stanley S. Anderson, recorded March 12, 1924, in Book 3649, p. 322, of Official Records, Los Angeles County.
3 (Arcade)	Lot 2 and Lot 3 in Block 3 of Beverly, as per map recorded in Book 11, page 94 of Maps, in the office of the

	County Recorder of Los Angeles County, subject to conditions, restrictions and reservations of record, described in Grant Deed dated March 5, 1924, J. R. Moulthrop to Stanley S. Anderson, recorded March 18, 1924, in Book 3736, page 24, of Official Records of Los Angeles County.
4 (Young's)	Lots 1 and 2 in Block 2 of Beverly, as per Map recorded in Book 11, page 94 of Maps in the office of the County Recorder, subject to conditions, restrictions and reservations contained in deeds from Rodeo Land and Water Company recorded in Book 3136, page 151, of Deeds, affecting said Lot 1, and in Book 3160, page 97, of Deeds, Records of said County, affecting said Lot 2, described in Grant Deed dated May 5, 1916, Mary C. Taylor and G. L. Taylor to Stanley Anderson, recorded July 26, 1916, in Book 6275, page 242, of Deeds, Records of Los Angeles County.
5 (MacLean's)	Lot 25, in Tract 6073, as per map recorded in Book 63, pages 12 and 13 of Maps, in the office of the County Recorder of Los Angeles County, as described in Grant Deed dated Sept. 30, 1929, Douglas McLean and Faith MacLean and James W. Horne and

	Cleo Freda Horne to Stanley S. Anderson, recorded Oct. 5, 1929, in Book 8251, page 395, of Official Records, Los Angeles County.
6 (Arcade)	Lot 1 in Block 3 of Beverly as designated and shown on map of said Beverly recorded in Book 11, page 94 of Maps in the office of the County Recorder of Los Angeles County, described in Deed dated April 14, 1916, Rodeo Land & Water Company to Stanley S. Anderson, recorded July 26, 1916, in Book 6271, page 288 of Deeds, Records of Los Angeles County. [318]
Parcel No.	
7 (Rodeo)	Lot 23, in Block 1 of Beverly, in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 11, page 94 of Maps, in the office of the County Recorder of said county, described in Grant Deed dated April 14, 1916, Mary MacBean and Isabella MacBean to Stanley S. Anderson, recorded July 26, 1916, in Book 6307, page 132, of Deeds, Records of Los Angeles County.
8 (Rodeo)	Lot 24 in Block 1 of Beverly, as described and designated and shown on Map of said Beverly recorded in Book

11, page 94 of Maps, in the office of the County Recorder of said county—subject to the restrictions in deed between the Rodeo Land and Water Company, a corporation, and O. M. Newby, dated October 4, 1912, and recorded on October 22, 1912, in Book 5229, of Deeds, at page 144, in the office of the County Recorder of said Los Angeles County—described in Grant Deed dated April 15, 1916, O. Franklin Thayer and Enona M. Thayer to Stanley S. Anderson, recorded in Book 6275, page 241, of Deeds, Records of Los Angeles County.

9 (Residence) A portion of Sections 10 and 11, Township 1 S, R. 15 W, S.B.B.&M., bounded and described as set forth in Deed dated August 22, 1921, from Title Guarantee and Trust Company to Stanley S. Anderson, recorded September 20, 1921, in Book 563, page 88, of Official Records, Los Angeles County.

10 (Stabler's) Lots 1 and 2 in Block 4 of Beverly, as per map recorded in Book 11, page 94 of Maps, in the office of the County Recorder of Los Angeles County; excepting therefrom the West 10 feet thereof as conveyed to the City of

	Beverly Hills for street purposes, subject to the covenants, conditions, restrictions, reservations, rights, rights of way and easements of record,—described in Corporation Grant Deed dated February 23, 1932, Stabler Bros. Inc. to Stanley S. Anderson et ux as joint tenants, recorded Mar. 25, 1932 in Book 11510, page 124 of Official Records of Los Angeles County.
11 (Rogue River Ranch)	Lots 3, 6, 7, 8 and 9 of Sec. 30 in Township 34 S, R 11 W, Willamette Meridian, containing 140.55 acres according to the Government Survey thereof, situated in the County of Curry, State of Oregon, as described in Warranty Deed dated November 2, 1929, Chas. D. Cunningham et ux to Stanley S. Anderson, recorded November 5, 1929, in Book 20, page 297, Record of Deeds of Curry County, Oregon.
12 (Rogue River Ranch)	Lots 4, 10 and 11 of Sec. 9, in Township 34 S, R 11 W, Willamette Meridian, Oregon, containing 71.04 acres, as described in Warranty Deed dated October 23, 1929, Madge D. Ellsworth and D. E. Ellsworth to Stanley S. Anderson, recorded November 5, 1929, in Book 20, page 296,

	Record of Deeds of Curry County, Oregon. [319]
Parcel No. 13 (Rogue River Ranch)	Lots 1 and 3, S½ of SW¼ of NE¼ and the SE¼ of the NE¼ of Sec. 9, and Lots 5 and 13 of Sec. 10, in Township 33 S of R 10 W of Willamette Meridian, Oregon, containing 159.95 acres, as described in Indenture dated March 11, 1930, George W. Billings and Sarah Ann Billings to Stanley S. Anderson, recorded March 20, 1930, in Curry County Records, Book of Deeds, Vol. 20, page 409. [320]

EXHIBIT B

STOCKS

Owned Jointly by Mr. and Mrs. Anderson

No. of Shares	Certificate Number	Company
500	B 301	Security-First National Bank
50	04075	
500 Common A	A 381	Fir-Tex Company
250 Common B	B 461	
1000 Common B	B 282	
Membership	6	Santa Monica Beach Club
Life Membership	151	Hollywood Country Club
5	261	Christie Realty Corporation

No. of Shares	Certificate Number	Company
20	A 05677	Southern California Edison
100 Common	NY 124723	Westinghouse
100 Common	NY 124722	Electric and
100 Common	NY 124721	Mfg. Company
100 Common	NY 124720	
50	NY0337029	
100 Preferred	482	Consolidated Rock
100 Preferred	481	Products
100 Preferred	480	
100 Preferred	479	
100 Common	297	
100 Common	296	
100 Common	985	
36 Common	01914	
	1066	California Club
	NN	International
63 Without Par Value	F 235932	Telephone & Telegraph
100	NN 73247	
100	NN 73246	
100	NN 73245	
100	NN 73244	
100	NN 73243	

Exh. B, 2

100	R 299	Bankers Securities
100	R 298	Corp.
100	R 297	

[321]

No. of Shares	Certificate Number	Company
100	R 296	
100	R 295	
100	R 294	
100	R 293	
100	R 292	
100	R 291	
100	R 290	
1	5	Benedict Canyon
15	25	Mutual Water Company
62½	10	Fox Westwood
130½	21	Realty Co., Ltd.

Together with any and all other stocks and/or bonds standing in the name of Mr. and/or Mrs. Anderson. [322]

Duplicate Original
AGREEMENT
by and between
Stanley S. Anderson
and
Marguerite S. Anderson
Dated June ...., 1932
Law Offices
Call & Murphey
514 Pacific Mutual Bldg.
Los Angeles, Cal.

[Endorsed]: United States Board of Tax Appeals. Admitted in evidence Jun 14, 1932. [323]

NAME OF PROPERTY Youngs Building #1 LOCATION Burton Way & Palos Drive

LOT FEET FRONT ON STREET AND STREET BY FEET DEEP BETWEEN STREET

IMPROVEMENTS

VALUE OF LAND 135,000.00
VALUE OF IMPROVEMENTS 67,788.00
TOTAL VALUE 202,788.00

LEGAL DESCRIPTION: Joint M S Anderson
Lots 1 & 2, Block 2

MORTGAGE $ DUE 19 INTEREST FROM 19 AT %
MORTGAGEE INTEREST PAYABLE WHERE

324

Pet Ex 41

INVESTMENT RECORD					INSURANCE			
DATE	DESCRIPTION	PURCHASE PRICE	DEVELOPMENT IMPROVEMENTS	SOLD FOR	COMPANY OR AGENT	POLICY NUMBER	EXPIRATION	AMOUNT
		135000.00	67788.00					
7/31/25	St. assessment	16793.						
Dec 31	"	82 41.						
Nov 30	Imp Tax	306 [illegible]						
Jan		[illegible]						

SHEET NO.

FORM C 190

ACCOUNT Jones Inv. Co. Joint M. H. Anderson ACCOUNT NO.

DATE 1926	DESCRIPTION	POST. REF.	CHARGES	✓	CREDITS	✓	DR. OR CR.	BALANCE	✓
Jan 1 1926		O/L	3106 48	✓					
Oct 31		C38			2163 87				
Nov 30		40			3832 50			2899 39	
Dec 31	To P&L	J22			217 50			24139 89	
1927			27246 37					3106 48	
Aug 31					41 50	✓			
Sept 30					40 00	✓			
Oct 31					30 00	✓			
Nov 30					85 00	✓			
✓					250 00			446 50	
	To P&L		416 50						
1928 Apr 30					295 00				
May 31					15 00	✓			
June 30					75 00	✓			
					25 00	✓			
July 31					29 50	✓			
Aug 31					3 00	✓			
Nov 30					77 50	✓			
✓					42 00	✓			
					[illegible]				

325

SHEET NO. STANDARD FORM C01

ACCOUNT Marguerite P. Anderson ACCOUNT NO.

DATE 19	DESCRIPTION	POST. REF.	CHARGES	CREDITS	DR. OR CR.	BALANCE AMOUNT
Jan 1	Washin Rent	J?		4726 00		
31		J1		400 00		
		J2		200 00		
Feb 28		J1		400 00		
		C3	500 –			5226 00
				5226 00		
Mch 31		J3		400 00		
Apr 30				400 00		
				6576 00		
	Taxes 907	C6	109 65			5916 [illegible]
June 30		C-8	1000 00			
July 31	St. ass. 907	9	18 94			5897 41
Aug 31		11	500 00			
		J6	550 00			
Sept 30		C13	200 00			
Oct 31		15	1000 00			
		J8	1660 00			1167 41
			5351 50			
Dec 31		C19	1000 00			
			[illegible]	5000 00		[illegible]
	Name Washin Rent	112	834 53	400 00		267 17
						[illegible]
Jan 31		C20	500 00			
Mch 31		25	300 00			
Mar 31	Error			10 00		1744 88
June 30		C32		500 –		1744 88

326

ACCOUNT NO. ACCOUNT SHEET NO. 1

DATE 19__	DESCRIPTION	POST. REF.	CHARGES	CREDITS	DR. OR CR.	BALANCE AMOUNT
Sept 30		C36	449 50			
Oct 31		38		2163 86		
✓		J24		7 —		[illegible]
Nov 30		C40		3832 51		[illegible]
Dec 31		J26		21250 —		[illegible]
✓		27	6349 16	3174 08		25377 69
			473 06	6058 90		30952 51
April 30			500 00			30458 51
June 30			600 —			
July 31			700 —			
Aug 31				4150 —		
Sept 30			300 —			
✓			600 —	4000 —		
Oct 31			2000 —	3000 —		
Nov 30				8500 —		
✓				25000 —		71408 51
Dec 31			700 —			
✓			573 77	9145 42		70134 74
			172 61			
Jan 31		66	500 —			
Feb 28		68	3 —			
Apr 30		70	7725 80			15875 75

SHEET NO. STANDARD FORM 631 ACCOUNT Marguerite L. Anderson ACCOUNT NO.

DATE 192	DESCRIPTION	POST. REF.	CHARGES	CREDITS	DR. OR CR.	BALANCE AMOUNT
				75 878 75		
Apr 30				39 500 –		
	Trf to N/P.			72580		
May 31		73		1 500 –		
June 30			1 500 –	2 500 –		
				4 250 –		
July 31				2 950 –		
Aug 31			750 –	300 –		
Sept 30			300 –			
Oct 31			115 –	500 –		
✓			3 000 –			
Nov 30				7 750 –		
✓			1 374 30	4 200 –		143 515 76
			6 139 30	131 135 80		
Dec 31			1 759 49			
✓			1 374 30			
✓			182			140 379 66
			9 677 91			

[Title of Court and Cause.]

AMENDED PRAECIPE FOR TRANSCRIPT OF RECORD ON APPEAL.

To the Clerk of the United States Board of Tax Appeals:

Please prepare and issue a certified transcript of record in the above-entitled case on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, consisting of the following documents:

1. The docket entries of proceedings before the United States Board of Tax Appeals in the case above entitled.

2. Pleadings before said Board, as follows:
   (a) Petition for redetermination.
   (b) Answer of respondent.
   (c) Amended petition filed June 14, 1932.

3. Findings of fact, opinion, and decision of the Board.

4. Petition for review. [329]

5. Statement of the evidence agreed upon, including copies of Exhibits 1 to 43, inclusive, which are to be made a part of such statement of evidence.

6. This praecipe.

You will please duly certify said documents as correct and transmit them to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit within sixty days from the date of

the filing of the petition for review and notice in the above-entitled case.

(Sd.) WARD LOVELESS,
920 Southern Building,
Washington, D. C.
Attorney for Petitioner. [330]

[Title of Court and Cause.]

CERTIFICATE

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 330, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 9th day of October, 1933.

[Seal] B. D. GAMBLE
Clerk, United States Board of Tax Appeals.

[Endorsed]: No. 7307. United States Circuit Court of Appeals for the Ninth Circuit. Stanley S. Anderson, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed Oct. 16, 1933.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

No. 7307.

In the

United States
Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

Stanley S. Anderson,

Petitioner,

vs.

Commissioner of Internal Revenue,

Respondent.

PETITIONER'S OPENING BRIEF.

Louis W. Myers,
Joseph D. Peeler,
Ward Loveless,
Title Ins. Bldg., 433 S. Spring St., Los Angeles,
Solicitors for Petitioner.

Filed
FEB 16 1934
PAUL P. O'BRIEN,
CLERK

Parker, Stone & Baird Co., Law Printers, Los Angeles.

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No. 7307.

In the

United States

Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

Stanley S. Anderson, *Petitioner*, *vs.* Commissioner of Internal Revenue, *Respondent*.	}

PETITIONER'S OPENING BRIEF.

STATEMENT OF THE CASE.

QUESTIONS INVOLVED AND HOW RAISED.

This case comes before this Court on a petition to review a decision by the United States Board of Tax Appeals (hereinafter referred to for brevity as the "Board"), sustaining the Commissioner in the determination of income tax deficiencies against the petitioner as follows:

Year	*Deficiency*
1924	$19,036.61
1925	9,752.59

The proceedings before the Board arose under petitions filed by the petitioner for redetermination of the Commissioner's proposed deficiencies. The decision by the Board is reported at 28 B. T. A. 179.

The proposed deficiencies rested primarily upon the inclusion in the taxable net income of petitioner of certain items of income which accrued to petitioner's wife as her separate property and which were reported on separate income tax returns filed by her for the taxable years here in question.

The Commissioner contended that all of the properties which produced the income items in controversy were community property and that the income therefrom was taxable entirely to the petitioner under *United States v. Robbins,* 269 U. S. 315. This contention was sustained by the Board in its decision.

The properties which produced the income items in question, had been acquired prior to January 1, 1924, and most, but by no means all, of these properties had been acquired out of the proceeds of the joint earnings of the petitioner and his wife. All of these earnings had been reported by petitioner and his wife on joint returns in

earlier years and their taxable status is not in issue in the present proceeding.

It should be noted that this proceeding does *not* involve, to any extent, the status, for tax purposes, of any *earnings* of the petitioner or his wife from personal services during the taxable years in question. Accordingly, this case is to be distinguished from the decisions of this Court in *Blair v. Roth,* 22 F. (2d) 932; *Earl v. Commissioner,* 30 F. (2d) 898, (reversed, 281 U. S. 111); and *Belcher v. Lucas,* 39 F. (2d) 74. For like reasons, the issue in this case is materially different from that presented in the case of *Howard C. Hickman,* 27 B. T. A. 807, now pending on appeal before this Court.

It is the opinion of petitioner's counsel that a careful consideration of the uncontradicted facts will, of itself and without argument or citation of authority, lead inevitably to the conviction that the Board erred in its conclusion that the property from which the income was produced was not the separate property of the two spouses at the time of the tax periods here in question. For this reason we shall set forth the facts of the case in somewhat more detail than is customary. In the following statement of facts we are including, verbatim, *all* of the Board's findings of fact (in italics) [Tr. 30-38]. The additions thereto (in ordinary type) are from the uncontradicted testimony of credible witnesses who were in no respect impeached or otherwise discredited, and whose testimony was accepted as true by the Board.

STATEMENT OF FACTS.

The petitoner and his wife, Marguerite S. Anderson, citizens of the State of California, were married in 1914. The petitioner at that time was employed as assistant manager of the Beverly Hills Hotel, which was owned by his mother, Margaret Anderson, at a salary of $3,000 per annum. At the time of their marriage neither the petitioner nor his wife owned any property of consequence. The petitioner's employment with the hotel continued until the World War, when he went abroad.

From 1914 to 1923, inclusive, the petitioner's wife acted as a hostess for the hotel, devoting all of her time to that business. Her duties were to provide entertainment and to arrange social functions for the guests and to secure new patrons. The hotel catered to the wealthy class.

At the time of her marriage, the petitioner's wife received a gift of $5,000 from her father, J. H. Slattery. Thereafter, for five or six years, she received additional gifts from him aggregating about $20,000. This money was used for various purposes, including household expenses, and $3,200 of it was invested as appears hereinafter.

In 1916 the petitioner's wife learned that a friend of hers was interested in buying an estate in the Beverly Hills section. She and the petitioner located a desirable piece of property and negotiated the sale, receiving a commission of $10,000, which was paid to the petitioner, it being agreed between them, however, that the commission should belong one-half to each.

Before this sale was made it was definitely agreed by and between petitioner and his wife that if they should

succeed in consummating the sale, one-half of the commission to be earned thereby would belong to her as her separate property. Petitioner and his wife agreed to invest said sum of $10,000 in real property Tr. 90, 109].

In May, 1916, the petitioner and his wife purchased five vacant lots in Beverly Hills at a total cost of $13,200, which amount they paid with the $10,000 commission referred to above and $3,200 which the petitioner's wife secured from her father. The deeds to the lots were taken in the petitioner's name and so remained until May, 1932, when new deeds were made to the petitioner and his wife as tenants in common.

At the time of the purchase of these lots there was a definite understanding between petitioner, his wife and her father that she owned a one-half interest therein and that the petitioner owned the other half. [Tr. 91, 92, 108] "She was to have half as her separate property." [Tr. 109] She did not know at that time nor at any time until the last of May, 1932, that the title to these lots was taken in the name of petitioner alone. [Tr. 92, 109]. She then learned for the first time that the title was in the sole name of petitioner and immediately employed an attorney and required petitioner to convey a half interest in the lots to her, and to execute a contract in writing reciting that she was the owner, as her separate property, of a one-half interest in these lots as well as other properties hereinafter referred to. [Tr. 100, 101, 111, 112, 418-429].

While the petitioner was overseas and prior to his return in 1919 the petitioner's wife and his mother entered into an oral agreement whereby she, the petitioner's wife, and the petitioner, upon his return, were to take over the entire management of the hotel and were to receive a

stipulated yearly salary of $3,000 plus one-half of the net profits. As a consideration for this agreement the petitioner's wife was to render full time services to the hotel. It was specifically agreed that she would share equally with the petitioner the yearly salary and the profits, if any. The agreement between petitioner and his wife was that she was to have one-half of the salary and net profits as her separate property. [Tr. 93, 110]. *Under this contract the petitioner and his wife received profits over the period 1919 to 1923, inclusive, of approximately $140,000. This amount, together with the salary of $3,000 per year, was paid to the petitioner by checks drawn on the hotel by himself as manager and was deposited by him in a joint bank account for himself and wife.*

Part of this money was used in making improvements on the five lots previously purchased. No expenditure was made from this fund unless petitioner and his wife both agreed thereto in advance. [Tr. 93, 99, 111.] J. R. Moulthrop, Esq., of San Francisco, who was attorney for Mrs. Anderson, senior, during all of this period (and, on occasions, for the petitioner), "always understood that there was an agreement between Stanley S. Anderson and Marguerite S. Anderson as to separate compensation. * * * it was a matter of common knowledge in the family." [Tr. 86.]

In September, 1923, the petitioner, with the knowledge and consent of his wife, entered into agreements with the Janss Investment Co. and Charles H. Christie for the acquisition of certain undivided interests in two real estate subdivisions. The contracts were signed by the petitioner and deeds were made out in his name. The total investment therein of the petitioner and his wife was

approximately $56,000, which was paid, for the most part, out of the profits from the hotel. Soon after this transaction the petitioner's wife asked him to prepare a written memorandum defining his and her respective rights in the investment. Accordingly, the petitioner, on September 5, 1923, prepared and delivered to his wife the following letter:

> *"Confirming our conversation relative to the Janss Investment and Charlie Christie land deal.*
>
> *Charlie and I agree to purchase from Janss 120.5 acres for $180,750 (for one-half interest, Janss retaining one-half), payable $60,250. cash in September and October, and notes for the balance of $120,500. On this deal I today paid $5000. on the September installment. I also entered into an agreement to purchase from Charlie Christie a 1/4 interest in 107 acres, the total price of the acreage being $321,000. and our 1/4 will amount to $80,250. Under the agreement by which Charlie is buying this land from Janss he is to pay $107,000. cash and notes for $214,000. The cash payments are to be made in September and October and I to-day paid $6250, which is 1/4 of the cash payment due in September.*
>
> *I understand from you that you agree to these transactions and agree to payment of your proportion of the cash payments from any funds now held jointly by us, and that you assume liability for your proportion of future payments, such liability to attach to your separate funds as well as those held jointly by us.*
>
> *It is the belief of Janss and Charlie that with the placing of this property on the market, the notes will be paid off from sales and we will not be called upon for cash to meet same.*

Should you for any reason have occasion, in my absence or in case of any misunderstanding arising later, to secure further details relative to this, Dr. J. will give you same."

A copy of the above letter was filed at the office of the Janss Investment Co. and Charles H. Christie also was advised of its contents. Petitioner initialed the copy of this letter, which was then delivered to the Janss Investment Co. and filed in the "Christie-Anderson" file of that company. [Tr. 71.] At that time petitioner and his wife both stated to Dr. Janss "that she owned, herself, one-half of everything" they were interested in with the Janss Company. "She made that very positive," and petitioner agreed to it. The employees of the Janss Company were then instructed that it would be "absolutely necessary" to get Mrs. Anderson's signature to all transactions affecting the Anderson properties. [Tr. 72.]

In the Janss Investment Co.'s books an account was kept in the petitioner's name until January, 1929, when the business was taken over by a newly organized corporation. In the books of the new company separate accounts were set up for the petitioner and his wife, showing them owners of separate equal interests. The Janss Investment Company had no reason for continuing to carry the account in petitioner's name, except that they were "very busy" and "probably neglected" to change it. [Tr. 76.] The Janss Investment Company followed precisely the same procedure in respect of the Christie account. They learned that Mr. Christie had five or six other persons interested with him in that transaction. Notwithstanding this they continued to carry that account on their books in the name of Christie alone but they re-

quired the signature of his associates to transactions involving those properties. [Tr. 77.]

From time to time the petitioner and his wife made other investments with their joint earnings and profits, with the understanding and agreement that they were equal owners therein and that each was entitled to receive one-half of the profits and was liable for one-half of the losses.

No investment was made unless petitioner and his wife both agreed thereto in advance. If they couldn't agree they didn't make the investment. [Tr. 93, 94, 111.] She thought that the titles to all these properties were in both their names. [Tr. 92, 111.]

Petitioner consulted Mr. Moulthrop, in 1923 or 1924, as to the advisability of deeding "Peggy's share of the property to her." Moulthrop advised him not to do so at that time, as he was borrowing frequently from the bank, and "banks and finance interests rather looked askance upon people found to be putting property in their wife's name." [Tr. 87, 88.]

The petitioner's wife at all times took an active interest in the affairs of the real estate syndicate. She frequently discussed matters of policy with the managers and gave her approval to the plans for the development and sale of the property. She signed all the deeds and mortgages and other papers of that character. Edwin Janss, president of the Janss Investment Co., and Charles H. Christie both understood that Marguerite S. Anderson and the petitioner owned equal interests in their investment. In August, 1926, the Janss Investment Co. deeded back to "Stanley S. Anderson and Marguerite S. Anderson" an

undivided one-fourth interest in 37 acres of the syndicate property which had not been sold.

In February, 1924, the petitioner and his wife executed and delivered to Edwin Janss and Harold Janss a general power of attorney, which was duly recorded. On January 27, 1925, the petitioner's wife executed and delivered a similar power of attorney to the petitioner.

In the latter part of 1924 the auditor for the Beverly Hills Hotel, upon request of the hotel bookkeeper, opened up a separate set of books for the petitioner as of January 1, 1925. Near the end of 1926 the petitioner inquired if his wife's share of the earnings from the "Young's Building" were being credited to her and, being informed that they were not, had the auditor open an account entitled "Joint M. S. Anderson" in which was set up the Young's Building at a valuation of $202,788. Also, at about that time, another account was opened as of January 1, 1926, entitled "Janss Inv. Co. Joint M. S. Anderson." Also, at about that time, another account was set up for "Marguerite S. Anderson."

On June 8, 1932, the petitioner and his wife, upon the advice of her attorney, executed a memorandum agreement providing in part as follows:

> *"Whereas the parties hereto were married in 1914 and at the time of said marriage neither had any property, and shortly thereafter an agreement was made between them to the effect that all property acquired by either after the date of their marriage, whether separate or community, should be deemed to be and should constitute the property of both of them as tenants in common, each owning an undivided one-half interest therein; and*
>
> *"Whereas about this time or shortly thereafter Mrs. Anderson received from her father, as a gift to*

her, various sums of money aggregating in all approximately $20,000.00, which she turned over to Mr. Anderson when and as received to invest under said agreement; and

"Whereas Mr. Anderson used said money, together with various earnings of both of them and various property which he received by gift from his mother, and proceeds and avails of all of said property, in purchasing, owning and selling real estate and other property, and for the purpose of convenience has carried the legal title to all property so acquired in his own name, but as trustee for himself and Mrs. Anderson as tenants in common, and said property has at all times constituted and does now constitute the property of the parties hereto as tenants in common, each owning an undivided one-half interest therein; and

"Whereas the parties desire to confirm the agreement between themselves hereinbefore referred to and to reduce the same to writing and thenceforward to to have the legal title to all real property acquired by them during their said marriage, from whatever source, held in their joint names as tenants in common pursuant to said agreement:

"Now, Therefore, it is Mutually Agreed by and between the parties hereto as follows:

"1. All property whatsoever, whether separate or community, heretofore or hereafter acquired by either of the parties hereto since and during their marriage and howsoever the legal title thereto may be held, constitutes the property and is owned by them jointly as tenants in common, each owning an undivided one-half interest therein as his and her respective separate property, and none of said property, no matter how the legal title thereto may be held, is or shall be owned in any other way than as tenants in common, each

owning an undivided one-half interest therein as his and her respective separate property."

For the calendar years 1920 to 1923, inclusive, the petitioner and his wife filed joint returns which were prepared for them by the hotel auditor. The petitioner informed the auditor in 1920 that one-half of the profits from the hotel belonged to his wife separately, but the auditor advised him that it was necessary under the law and the Commissioner's regulations to report all the income in joint returns. For the years 1924 and 1925 the petitioner and his wife filed separate returns in which they each reported one-half of their entire income. The respondent in his audit of the returns for 1924 and 1925 has held the petitioner liable for taxes upon the entire amount of the income reported in both the returns. The items of income which the petitioner alleges, in his amended petition, were erroneously included in his income and which are taxable to his wife are as follows:

1924	
Interest from Notes, Mortgages and Bank Deposits	*$ 1,698.63*
Rents from real property	*9,876.18*
Profits on sales of stocks and real property	*6,768.19*
Dividends from stocks	*2,000.00*
Profit from joint ventures in real estate	*29,506.56*
Capital net gain	*16,747.00*
1925	
Interest from Notes, Mortgages and Bank Deposits	*964.78*
Rents from real property	*5,342.80*
Dividends on stocks	*4,751.83*
Profit from joint ventures in real estate	*28,541.55*
Loss from joint ventures in real estate	*2,162.89*

It is apparent from the foregoing statement of facts that all of the properties which produced the income in question during the years 1924 and 1925 were acquired from one or more of three sources, to-wit:

(1) Gifts of money to petitioner's wife from her father during the period from 1914 to 1920. [Tr. 31.]

(2) The commission of $10,000.00 earned by the joint efforts of petitioner and his wife in 1916. [Tr. 31.]

(3) The salaries and profits aggregating approximately $155,000.00 earned by petitioner and his wife in the management and operation of the hotel during the years 1919 to 1923, inclusive. [Tr. 32.]

The money gifts to petitioner's wife from her father were of course her separate property in the first instance. $3,200.00 of this money together with the $10,000.00 derived from the commission were invested in 1916 in five vacant lots in Beverly Hills [Tr. 31, 32], upon a portion of which was erected the Young's Building, valued in 1926 at more than $200,000.00. [Tr. 35.] The salaries and profits from the operation of the hotel were invested in part in the improvements upon the five lots last referred to, prior to 1924 [Tr. 98, 99], and the remainder thereof for the most part was used in the acquisition of the subdivision properties from the Janss Investment Company and Charles H. Christie in September, 1923. [Tr. 32, 33.] The income during the years 1924 and 1925 here in question was almost wholly derived from those five lots with the improvements thereon and from the Janss and Christie properties. [Tr. 38.]

The Board's Conclusions and the Assignments of Error.

The ultimate question of law to be determined upon this appeal is whether or not the several agreements between petitioner and his wife together with their acts, declarations and conduct in consummation of said agreements were legally sufficient under the law of California to transmute their properties into separate properties of the two spouses, so as to constitute them tenants in common, each owning an undivided one-half interest as his or her separate property, prior to the beginning of the year 1924.

The assignments of error herein are numerous [Tr. 58-61] and it does not seem necessary to repeat them at length herein. (They are set forth in the appendix hereto.) The substance thereof may be stated in the following manner:

The fundamental error in the Board's decision consists in its ultimate conclusion [Tr. 47] "that the income in question for the years 1924 and 1925 was community income taxable to the petitioner." That ultimate conclusion was predicated upon certain subsidiary conclusions, each of which, in our opinion, is erroneous and which may be stated as follows:

The Board erred in assuming [Tr. 40] that petitioner's case rests upon the fact that "his wife contributed equally with him to their joint earnings." That is not the case. Petitioner's case rests upon express agreements, both oral and written, between petitioner and his wife, together with

their acts and conduct in consummation thereof, and also upon admissions against interest in the presence of numerous third parties, which rendered those agreements readily susceptible of proof and enforcement.

The Board erred in assuming [Tr. 41] that the agreement between petitioner and his wife was merely "that they should each own a separate one-half interest in all of their income and property." The agreements between petitioner and his wife went much further than this. They were expressly to the effect that her one-half interest in their income and property should be her *separate* property.

The Board erred in concluding [Tr. 41] that an agreement in writing was necessary in order to change the nature of the community property, or that "written evidence of such an agreement" was indispensable to the proof thereof. Oral agreements are valid and effective to this end under the California law and no written evidence thereof is required.

The Board erred in concluding [Tr. 42] that the letter signed by petitioner, delivered to his wife and filed with the Janss Investment Company, was not effective as an agreement because "not signed by petitioner's wife." This circumstance does not at all detract from its validity and effectiveness as a contract, under the California law, or as evidence of an oral agreement.

The Board erred in concluding [Tr. 42] that the letter last referred to "has but little, if any, probative value." We shall show that it has the highest probative value.

The Board erred in assuming [Tr. 42] that "the facts in this case are hardly distinguishable from those in *Blair v. Roth,*" 22 F. (2d) 932. The facts in that case are so materially different that the opinion in that case, by clear implication, supports petitioner's contentions herein.

The Board erred in assuming [Tr. 46] that the facts in the case of *Pedder v. Commissioner* (60 F. (2d) 866) are "similar to those in the instant case." The facts in that case are so dissimilar as to render that case an authority by implication in support of petitioner's contentions herein.

The Board erred in concluding [Tr. 46, 47] that a presumption of law is evidence which remains in the case to be weighed as against proved facts established by the uncontradicted testimony of credible witnesses.

The Board erred in concluding [Tr. 47] that the testimony of petitioner and his wife respecting the oral agreements theretofore entered into between them was incompetent or otherwise insufficient. We shall show that under the California law such testimony was not only competent but was wholly sufficient to that end.

The Board erred in concluding [Tr. 41] that the $3,200.00 from her separate property which petitioner's wife invested in the five lots in Beverly Hills "were commingled with their other earnings and investments so that their identity was lost."

BRIEF OF THE ARGUMENT.

The rules of law to be discussed herein may be summarized as follows:

1. *In California a husband and wife may, by agreement, transmute their community property into separate property of either one or both of the spouses.*

2. *Such agreement is not required to be in writing or to be proved by written evidence. It is valid and effective though made orally and with the utmost informality. It may be proved in parol, either by direct or circumstantial evidence.*

3. *Such agreement may be made to operate in praesenti and/or prospectively in application to future earnings, income and acquisitions of either or both of the spouses.*

The foregoing three rules are of vital and controlling importance in their application to the facts of this case. For example, prior to the earning of the $10,000.00 commission, it was expressly agreed between petitioner and his wife that half of the commission, when earned, would be *her separate property*. [Tr. 90.] It follows that when that commission was earned and received one-half thereof, or $5,000.00, *ipso facto* became and was the separate property of Mrs. Anderson. It may be conceded for the purposes of this appeal that under the rule of *Lucas v. Earl,* 281 U. S. 111, the entire commission of $10,000.00 was properly chargeable against petitioner as community income earned by the community *during the tax year 1916.* Presumably it was so charged and paid. This does not change the fact that, as soon as it had been earned and received, one-half of that sum became and was the *separate property* of Mrs. Anderson.

Likewise when petitioner and his wife agreed to invest the $10,000.00, which they then owned as tenants in common, (together with Mrs. Anderson's $3,200.00), in the Beverly Hills lots, they expressly agreed that she was to own a half interest therein *as her separate property.* [Tr. 109.] Therefore, under the foregoing rules of law, as soon as those lots were acquired the undivided one-half interest therein *ipso facto* became and was the separate property of Mrs. Anderson. This was more than seven years prior to the commencement of the tax period here in question.

Likewise when petitioner and his wife agreed to undertake the operation and management of the hotel it was expressly agreed between them that she was to have one-half of the salary and net profits *as her separate property.* [Tr. 93, 110.] It follows that as each item of such salary and profits was earned and received one-half thereof automatically became and was the *separate property* of Mrs. Anderson. *This agreement was performed* between the parties by depositing those amounts as received *in a joint account* of petitioner and his wife. [Tr. 32.]

It likewise may be conceded for the purposes of this appeal that those earnings and profits, as received, were chargeable to petitioner as community income *for the taxable year in which they were received.* Presumably they were so charged and paid. The fact remains that, immediately after they had been received, one-half thereof became and was the separate property of Mrs. Anderson. Those earnings and profits, having been received and deposited in the joint account of petitioner and his wife, were thereafter withdrawn, from time to time, and invested in improvements upon the Beverly Hills lots and

in the acquisition of other properties, including the Janss and Christie subdivisions. This also was done pursuant to the mutual agreement of the spouses and upon the express agreement that Mrs. Anderson would own a one-half interest in those properties *as her separate property.* [Tr. 72.] It should be borne in mind that all of these transactions eventuated and were consummated *long prior to the commencement of the tax period here in question.* The evidence thus indisputably identifies Mrs. Anderson as the owner of an undivided one-half interest in all of the properties which produced the taxable income *as her separate property throughout the entire tax period* here in question.

4. *In California a contract in writing signed by one party and accepted by the other is as effective as if signed by both.*

It follows that the Board erred [Tr. 42] in denying any legal or probative effect to the letter signed by Mr. Anderson and delivered to his wife setting forth their interests in the Janss and Christie properties and their agreements respecting the same. [Tr. 237.]

5. *In the federal courts a presumption of law is not evidence and has no probative force. It merely points out the party who has the duty of going forward and is dissipated by positive evidence to the contrary.*

The entire conclusion of the Board herein rests upon the erroneous assumption that it was called upon to compare the weight of the evidence, which was all upon one side, as against the assumed weight of a presumption of law, which the Board regarded as evidence, on the other side of the case. [Tr. 30.]

6. *The Board misconstrued and misapplied the federal decisions upon which it relied.*

7. *The $3,200.00 invested by petitioner's wife in the Beverly Hills lots did not lose its identity through being commingled with other investments.*

8. *Petitioner is entitled to judgment on the findings of fact.*

I.

In California a Husband and Wife May, by Agreement, Transmute Their Community Property into Separate Property of Either One or Both of the Spouses.

This is settled law in the decisions of the California courts and of this court. The substance of the California statutes and decisions upon this subject is set forth so succinctly in the opinion of this court in *Earl v. Commissioner,* 30 F. (2d) 898, 899, that we cannot do better than to quote therefrom as follows:

> "Sections 162, 163 and 164 of the Civil Code of California provide that all property owned by either spouse before marriage or thereafter acquired by gift, bequest, devise, or descent, with the rentals, issues, and profits thereof, is separate property, and all other property acquired after marriage by either spouse belongs to them as community property, but by the same law a husband and wife may enter into any engagement or transaction with the other respecting property which either might if unmarried (section 158), and they may hold property as joint tenants, tenants in common, or as community property (section 161). It is consequently the holding of the

Supreme Court of California that an agreement between a husband and wife domiciled there, without any other consideration than their mutual consent, that the future earnings of the wife should be her separate property, is valid, and such earnings do not become community property. Wren v. Wren, 100 Cal. 276, 34 P. 775, 38 Am. St. Rep. 287; Cullen v. Bisbee, 168 Cal. 695, 144 P. 968; Kaltschmidt v. Weber, 145 Cal. 596, 79 P. 272. If, as thus seems to be the settled law of the state, and which is recognized as such by the Board of Tax Appeals (Krull v. Commissioner of Internal Revenue, 10 B. T. A. 1096), a husband and wife may legally agree by contract that the future earnings of the wife shall be her separate property, and by virtue of such agreement they do not become the property of the community, there is no sufficient reason why they may not make a similar agreement with reference to the earnings of the husband, or, as here, that their joint earnings shall belong to them jointly and not otherwise."

(It follows inevitably that there is no sufficient reason why the spouses may not make a similar agreement that their joint earnings shall belong to them as tenants in common.)

This court added:

"Under the California system there is no difference between the earnings of the wife and the earnings of the husband. They are each community property (Martin v. Southern Pacific, 130 Cal. 285, 62 P. 515), and an agreement of husband and wife that her future earnings may nevertheless be her separate property differs in no way in principle from an agree-

ment that his earnings may be the joint property of both (Estate of Harris, 169 Cal. 725, 147 P. 967)." [Or, we add, that their earnings shall be the common property of both as tenants in common.]

While that decision of this court was later reversed (*Lucas v. Earl,* 281 U. S. 111), the decision of the Supreme Court in no way detracted from the validity and correctness of the portion of the opinion of this court above quoted. The reversal was predicated solely upon the conclusion that under the terms and provisions of the federal taxing act the earnings of the spouses during the tax year shall be deemed to have vested "for a second" in the community and therefore to be chargeable against the husband as community earnings *during that tax year.* The Supreme Court conceded the validity of the contract between the spouses and its effectiveness to transmute such earnings into separate property immediately *after* such vesting in the community, "for a second."

As is apparent from the decision of the Board at 10 B. T. A. 723, the *Earl* case involved only the taxable status of the *earnings from services* during the years in question. The Commissioner there conceded that the *income from properties,* which had been purchased with the *earnings of earlier years,* was *divisible* on the separate returns of the husband and wife. This is apparent from the statement in the Board's opinion at page 724, as follows:

"In determining the deficiencies here involved the respondent gave effect to the agreement set out in the findings of fact *in so far as the income from property was concerned, holding that one-half of the amounts received from such sources was taxable to*

> *the petitioner's wife,* but held that the entire amounts of $24,839 and $22,946.20 received in 1920 and 1921, respectively, as salary, fees, etc., were taxable to the petitioner."

(Italics added throughout, unless otherwise noted.)

In the present case, the only issue relates to the *income from property which had been acquired in earlier years,* principally out of the earnings of the petitioner and his wife, which, by express agreement, had been transmuted into separate property, owned by them as tenants in common. Accordingly, our contentions herein are similar to those which, in the Earl case, were admitted by the Commissioner and held by the Board to be correct.

Both the respondent and the Board concede herein that "the respective interests of the husband and wife in community property and likewise community income, with certain limitations as set forth in *Lucas v. Earl,* 281 U. S. 111, are subject to change by contract between the husband and wife." [Tr. 39, 40.] The Board, however, apparently assumed that such contract to be effective must have been in writing or at least must have been proved by written evidence. They say [Tr. 41]: "There is no written evidence of such an agreement with respect to any of their property prior to September 5, 1923, which is the date of the above letter from petitioner to his wife, * * *." Again they say [Tr. 42]: "The letter is not signed by petitioner's wife and was not executed as an agreement." The Board was in error in its conclusion in this respect. The law of California places no such limitation upon the right of the spouses to contract in respect of the community property or upon the character of evidence required to prove and enforce such contracts.

II.

Such Agreement Is Not Required To Be in Writing or To Be Proved by Written Evidence. It Is Valid and Effective Though Made Orally and With the Utmost Informality. It May Be Proved in Parol, Either by Direct or Circumstantial Evidence.

III.

Such Agreement May Be Made to Operate in Praesenti and/or Prospectively in Application to Future Earnings, Income and Acquisitions, of Either or Both of the Spouses.

The foregoing rules of law are firmly established by the California statutes and decisions, which in this behalf are controlling upon this court.

California Civil Code, section 158, provides in part:

> "Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried; * * *"

Section 159 provides in part:

> "A husband and wife cannot, by any contract with each other, alter their legal relations, except as to property * * *."

Section 160 provides:

> "The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section."

Section 161 provides:

> "A husband and wife may hold property as joint tenants, tenants in common, or as community property."

The leading California case upon this subject is *Perkins v. Sunset Tel. & Tel. Co.*, 155 Cal. 712. That was an action by a married woman to recover damages for personal injuries sustained by her as a result of the defendant's negligence. The defendant contended that under the California statutes such cause of action was community property vested in plaintiff's husband, who was not a party to the action. The trial court found:

> "For more than ten years there had been an agreement between J. F. Perkins and his wife whereby it was mutually consented that all community property on hand *or to be acquired* by either should be and become the sole and separate property of Elizabeth M. Perkins (the plaintiff)."

That agreement was established at the trial by the parol testimony of witnesses. Upon this point the Supreme Court said (155 Cal. pp. 719-721):

> "Appellant attacks these findings on the ground that the evidence is insufficient to support them, but they set forth substantially the facts deducible from the *testimony of plaintiffs* themselves and of *other witnesses.* Appellant calls attention to the fact that there is no evidence of an *assignment* by the husband of his interest in the cause of action and then cites authorities to the effect that a cause of action for tort is not assignable. Undoubtedly appellant is correct in its position that such cause of action generally cannot be assigned, but the point is not here involved. The findings are not that there was an *assignment* but

that long before the cause of action arose Mr. Perkins *relinquished* his interest in the community property and that his act, after the injury to his wife, was one *of relinquishment and not of assignment.* Respondents contend that: 1. The cause of action was the separate property of the wife when it arose; and, 2. That in any event the agreement between the two spouses was sufficient to *transmute* the community property into separate property.

"Under our law there can be no doubt that a husband and wife may enter into a contract with respect to their property whereby *one may release to the other all interest, both present and in expectancy.* (Crum v. O'Rear, 132 Ill. 443 (24 N. E. 956); *In re* Davis, 106 Cal. 453 (39 Pac. 756); Von Glahn v. Brennan, 81 Cal. 264 (22 Pac. 596); Wren v. Wren, 100 Cal. 279 (38 Am. St. Rep. 287, 34 Pac. 775); Kaltschmidt v. Weber, 145 Cal. 598 (79 Pac. 272).) In the case last cited the following language is used: 'There can be no doubt that the husband may make a gift of the community property to the wife, and that the effect of such gift will be to *transmute* it into her separate estate. The provision in section 172 of the Civil Code that he cannot make a gift of community property unless the wife, in writing, consent thereto, is a provision for her benefit and protection, and it has no application to the case of a gift by the husband directly to the wife. And so, also, he may, under sections 158 and 159 of the Civil Code, contract with her by an agreement that her personal earnings shall be her separate property, and *this may apply to future as well as past earnings,* and the effect of such an agreement will be to convert such earnings *from the status of community property to that of separate property* of the wife.' It will be seen by an examination of the authorities cited above

that the utmost freedom of contract exists in California between husband and wife and that *the courts will resort to circumstantial evidence furnished by the general conduct of the spouses with reference to their property in determining the existence or non-existence of a contract* where the exact terms of the alleged agreement has escaped the memory of one or both of the parties to it. In the case at bar *there was both positive evidence and also testimony as to facts and circumstances* tending to show that the contract, whereby the husband *remitted* to his wife all his interest in that which would ordinarily have been the community property, was, and had been in existence for a long period of years. The findings upon that subject were supported by the evidence."

The foregoing decision establishes a number of points of importance in the present case, among which are the following:

1. That a husband and wife may by mutual agreement *transmute* the community property into separate property.

2. That such agreement may apply to future as well as past earnings and acquisitions.

3. That such agreement need not be in writing.

4. That it may be proved by parol testimony.

5. That it may be proved by circumstantial evidence.

6. That such an agreement does not operate by way of assignment or conveyance, but operates by establishing the *status* and *incidents* of the property.

Kaltschmidt v. Weber, 145 Cal. 596, involved the question whether the earnings of the wife while living with her husband were her separate property or community property. The court held that a prior understanding between the spouses whereby she was to have the management and control of her earnings would be adequate and effective to transmute her future earnings into separate property. Upon this point the court said:

> "And so, also, he may, under sections 158 and 159 of the Civil Code, contract with her by an agreement that her personal earnings shall be her separate property, and this may apply to future as well as past earnings, and the effect of such an agreement will be to convert such earnings from the *status* of community property to that of separate property of the wife." (The italics are the court's.)

The decision of the California court in *Wren v. Wren,* 100 Cal. 276, and the decision of this court in *Moore v. Crandall,* 205 F. 689, are to the same effect.

In *Estate of Patterson,* 46 Cal. App. 415 (petition for hearing denied by the Supreme Court), the principal question was whether an agreement between husband and wife whereby the former relinquished to the latter his inheritable interest in her estate, which consisted of real and personal property, was required to be in writing, or to be proved by written evidence, in order to be valid and effective. The court held that it was not, saying (46 Cal. App. 421):

> "Nor is such an agreement within any provision of our statute of frauds, or within the fair import of any language thereof."

The court then pointed out that under the California statutes and decisions such an agreement is valid and effective though resting solely in parol, and that it may be proved either by parol testimony or by circumstantial evidence.

It is also well settled in California that such agreements are valid and effective although couched in the most informal terms.

In *Von Glahn v. Brennan*, 81 Cal. 261, the only express agreement between the spouses was that the husband said to the wife, "Everything you make is yours." That case was an action of ejectment relating to real property between the wife and a third party. The court held that the parol testimony above quoted, together with circumstantial evidence as to the conduct of the parties, was sufficient to establish her separate ownership.

In *Larson v. Larson*, 15 Cal. App. 531, the only direct evidence of an agreement between the spouses was the testimony of the wife that her husband had said to her: "Go ahead on your own business and take care of your business for yourself." The court held that this testimony, together with circumstantial evidence of the conduct of the parties, was sufficient to establish a valid contract the effect of which was to transmute her future earnings into her separate property.

Smith v. Smith, 47 Cal. App. 650, was a controversy between the spouses as to whether certain real property which had been acquired subsequent to the marriage and paid for out of the wife's earnings, was community property or was her separate property. *There was no direct evidence of any agreement between the spouses.* The court held that the evidence of the acts and conduct of the

spouses (which was entirely circumstantial) was legally sufficient to establish the existence of a contract between them the effect of which was to transmute her earnings into her separate property.

Rayburn v. Rayburn, 54 Cal. App. 69, is to the same effect. That was a controversy between husband and wife as to whether her earnings were community property or were her separate property. There was no evidence of any express agreement between the spouses. The court said:

> "There was no direct evidence as to whether or not the parties considered the wife's earnings to be her separate property. In the absence of more certain proof, such statements and conduct of the defendant afford sufficient grounds for the *inference* that it was understood between them that the wife's earnings should be her separate property."

The rule is thus firmly established in California that parol evidence is competent and sufficient to establish the wife's separate ownership in property the legal title to which is in the husband and which is presumptively community property. This is the rule in California even though the property in question be real property. (*Smith v. Smith, supra,* 47 Cal. App. 650; *Estate of Patterson, supra,* 46 Cal. App. 415.) As the court said in the case last cited:

> "Nor is such an agreement within any provision of our statute of frauds, or even the fair import of any language thereof."

The same rule obtains in the federal courts. In *Commissioner v. Molter,* 60 F. (2d) 498, the Circuit Court of

Appeals for the Tenth Circuit held that parol evidence or circumstantial evidence is competent and sufficient to establish the fact that real property the legal title to which stood in the name of the husband was in fact owned jointly by the husband and wife. That case is on all fours with the case at bar.

Likewise in the case of *Matern v. Commissioner*, 61 F. (2d) 663, this court held that parol evidence was competent and sufficient to establish the wife's separate ownership of real property the legal title to which stood in the husband.

In the present case there are two separate and distinct reasons (each of which alone is wholly sufficient) why neither a written agreement nor written evidence was required to establish the wife's separate ownership in one-half of the properties here in question. These are:

1. In California an agreement between the spouses changing the marital property from community to separate, or vice versa, *does not operate as a conveyance or transfer*. As is shown by the California decisions above cited, such an agreement operates directly and of its own force to *change the nature and incidents* of the property *without changing the legal title*. Accordingly, as pointed out by the California court, there is no statute of frauds applicable thereto.

2. In the present case the community earnings were effectively transmuted into separate property of the spouses *before they were invested in any real property*. Therefore, when real properties were thereafter purchased with those funds, one-half of the purchase price thereof *was paid with the wife's money*. Under these circum-

stances, when the legal title to the real properties was taken in the name of the husband, a resulting trust arose *ipso facto* whereby the husband held such legal title as trustee for his wife to the extent of an undivided one-half interest. The existence of such a resulting trust may always be proved by parol evidence.

25 *Cal. Jur.* 178, 179, and cases cited.

As a matter of fact the Board's decision in this case is absolutely inconsistent with its own decisions recognizing that agreements between husband and wife transmuting community property into separate property need not be evidenced by written documents, but may be proved by oral testimony and other circumstances. Thus, in *Francis Krull,* 10 B. T. A. 1096, the Board gave effect to an *oral* agreement between a husband and wife transmuting the earnings of a wife into her separate property. To the same effect, see

Louis Gassner, 4 B. T. A. 1071;
C. R. Davis, 20 B. T. A. 931;
Leon Salomon, 4 B. T. A. 1109 (citing *Moore v. Crandall,* 205 F. 689, C. C. A. 9th); and
Howard C. Hickman, 27 B. T. A. 807.

In the present case, the practical effect was a *quasi* partnership between the petitioner and his wife, in which they pooled all their properties and earnings and in which each was to own a separate one-half interest. So viewed, this case is an exact parallel of *J. Kammerdiner,* 25 B. T. A. 495, 497, in which decision the Commissioner has announced acquiescence (C. B., XII-1, page 7), where the Board said:

"Section 158 of the Civil Code of California provides that "a husband and wife may enter into a part-

nership in California, and if there is an agreement which shows that the intention of the parties is to create a vested interest in the partnership in the wife as her separate property, such intention will change the character of their property from community to separate property.' In this proceeding it is perfectly clear that the petitioner and his wife joined together in April of 1923 to carry on a business enterprise for their mutual benefit. This is sufficient to establish a partnership. Cf. *Meehan v. Valentine,* 145 U. S. 611; *E. C. Wilson et al.,* 11 B. T. A. 963.

"A common law contract of partnership may be oral. *E. C. Wilson, supra; Bates v. Hancock,* 95 Cal. 479, 30 Pac. 605; *Koyer v. Willmon,* 150 Cal. 785, 90 Pac. 135; *Musick Consolidated Oil Co. v. Chandler,* 158 Cal. 7, 109 Pac. 613. The fact that for business reasons the operations were conducted in the name of the husband does not defeat the partnership. Cf. *John T. Newell,* 17 B. T. A. 93; *Leonard M. Gunderson,* 23 B. T. A. 5. Nor is it material that no capital account was maintained on the books kept by the partnership. *R. A. Bartley,* 4 B. T. A. 874; *John T. Newell, supra; E. L. Kier,* 15 B. T. A. 1114. In the light of the evidence and of the many decided cases and proceedings involving this issue, we are of the opinion that the determination of the respondent that there was no partnership in the taxable year between petitioner and his wife must be reversed. *L. S. Cobb,* 9 B. T. A. 547; *E. L. Kier, supra.*"

Accordingly, the Board's decision in this case is not only contrary to the established law in California and in the federal courts, but is absolutely inconsistent with its own decisions in numerous cases involving oral agreements between spouses.

IV.

In California a Contract in Writing, Signed by One Party and Accepted by the Other Is as Effective as if Signed by Both.

As shown above, it is not necessary that an agreement between husband and wife be in written form in order to transmute community holdings or earnings into separately owned properties. It is settled law in California that a mere oral agreement, however informal, is valid, effective and adequate to change the status of the marital property without the interposition of any transfer or conveyance.

However, it should be noted that in the present case the petitioner introduced into evidence a written document clearly setting forth his wife's separate property interest in the Janss and Christie properties. Incidentally, the income from these particular properties, $29,506.56 in 1924 and $28,541.55 in 1925 [Tr. 38], represented the major part of the amounts here in controversy.

It will be remembered that on September 5, 1923, at the time of the acquisition of the Janss and Christie properties, petitioner signed and delivered to his wife a writing in the form of a letter outlining the terms of these transactions and acknowledging her interest therein and setting forth her obligations in respect thereof. [Tr. 237.] Petitioner and his wife then delivered a copy of this letter, initialed by petitioner, to Janss Investment Company and caused the same to be deposited in the files of that company as evidence of Mrs. Anderson's ownership of a one-half interest in those properties. [Tr. 69-72.] The Board

refused to accord any materiality to this document for two reasons. They said [Tr. 42]: "The letter is not signed by the petitioner's wife and was not executed as an agreement. We think that it has but little, if any, probative value." It is submitted that the Board was in error as to both conclusions.

The California Supreme Court in *Fidelity etc. Co. v. Fresno etc. Co.*, 161 Cal. 466, 473, said:

> "The receipt and acceptance by one party of a paper signed by the other, and purporting to embody all the terms of a contract between the two, binds the acceptor, as well as the signer, to the terms of the paper. (9 Cyc. 260, 391; Civ. Code, Sec. 1589; Watkins v. Rymill, L. R., 10 Q. B. D. 178, 188.)"

The case of *Frankfort etc. Co. v. California etc. Co.*, 28 Cal. App. 74, 82, is to the same effect.

It is respectfully submitted that notwithstanding the declaration of the Board, the letter in question has probative value of almost the highest character known to the law. It is a declaration against interest, an admission deliberately made by the husband, in writing, and signed by him and delivered to her, for the purpose of providing her with tangible evidence of her ownership in the properties therein referred to and defining her obligations in respect thereof. True, it does not define her interest in precise terms as being an undivided one-half interest, nor does it state expressly that her said interest is her separate popperty. Both of these omissions, however, were supplied by the contemporaneous oral declarations of both parties in the presence of Dr. Janss. [Tr. 69-72.] This letter

alone, coupled with the declarations of the parties at the time of its delivery to Dr. Janss, has a much higher probative value than any of the evidence which was held sufficient to establish the wife's separate ownership of marital property in the California cases above cited.

It is submitted that even if there were no other evidence in the case than the letter of September 5, 1923, and the testimony of Dr. Janss [Tr. 69-72] as to the circumstances of the delivery to him of an initialed copy thereof, this evidence alone would compel the reversal of the Board's decision herein.

V.

In the Federal Courts a Presumption of Law Is Not Evidence and Has No Probative Force. It Merely Points Out the Party Who Has the Duty of Going Forward, and Is Dissipated by Positive Evidence to the Contrary.

The consideration and determination of this case by the Board was permeated throughout and influenced by the erroneous conclusion of the Board that a presumption of law is evidence. This is demonstrated by the language of the decision. The first sentence of the official syllabus of the decision begins as follows [Tr. 30]:

> "In the absence of sufficient proof to overcome the presumption that the property acquired by the petitioner and his wife after marriage was community property under the laws of the state of California * * *."

Again the Board says [Tr. 46]:

> "* * * that the presumption of the law of the state of California in favor of community property was not overcome."

And again [Tr. 46-47]:

> "Aside from the presumption of law which, as we have said, operates in favor of the respondent's contention * * *";

and the Board concludes its opinion with the following [Tr. 47]:

> "We are therefore of the opinion that the petitioner has not overcome the presumption * * *."

It is thus apparent that the Board's decision is predicated upon the legal conclusion that a presumption of law is evidence. This rule of law does not obtain in the federal courts or in hearings before the Board of Tax Appeals. It does obtain in the state courts of California, but this is so merely because the California statute says so. (*C. C. P.*, Sec. 1957.)

Fortunately, the federal courts are not burdened with any such artificial and unworkable rule of evidence as is created by the California statutes. This is settled by the recent decision of this court in *Ariasi v. Orient Ins. Co.*, 50 F. (2d) 548. The situation in that case was that there was a presumption of law on the side of the defendant, as against the testimony of a single interested witness (the plaintiff) on the side of the plaintiff. The trial court rejected plaintiff's testimony and found in favor of the defendant upon the presumption of law. This court, after

an exhaustive and scholarly discussion of the authorities, reversed the judgment, holding that presumptions of law created by the California statutes are not controlling in the federal courts. As pointed out in the opinion, the federal courts follow the rule which prevails generally throughout the United States that

> "A presumption is not evidence of a fact, but purely a conclusion, having no probative force, and designed only to sustain the burden of proof until evidence is introduced tending to overcome it." (p. 553.)

It is also pointed out in the opinion that "the court cannot arbitrarily reject the testimony of a witness whose testimony appears credible."

The rational rule so firmly established in the federal courts, that a presumption is not evidence, is binding upon the Board of Tax Appeals in hearings before it. The federal statute provides:

> "The proceedings of the Board and its divisions shall be conducted in accordance with such rules of practice and procedure (other than rules of evidence) as the Board may prescribe and in accordance with *the rules of evidence applicable in courts of equity of the District of Columbia.*" (26 U. S. C. A., §1219.)

The rules of evidence applicable in courts of equity in the District of Columbia are those laid down in the decisions of the Supreme Court of the United States which

are cited in the opinion of this court in the *Ariasi* case, *supra.* This is demonstrated by the decision of the Court of Appeals of the District of Columbia in *Dempster Mill Mfg. Co. v. Burnet, Commissioner,* 46 F. (2d) 604. That was an appeal from a decision of the Board of Tax Appeals. In that case was presented the situation of the testimony of a single interested witness upon the side of the taxpayer, and a presumption of law upon the side of the Commissioner. The Board held in favor of the Commissioner, basing its decision upon the presumption of law. The Court of Appeals reversed this decision. The court held that it was reversible error for the Board to disregard the testimony of a single witness which was uncontradicted, notwithstanding he was an interested witness and his testimony which was rejected by the Board was opinion evidence (relating to value). The court said (p. 606):

> "The only witness who testified directly as to the value of the stock of the Florence Company on March 1, 1913, was C. B. Dempster, for forty years president of appellant company. It was his testimony that was rejected as being the testimony of an interested witness. We think it was error to disregard the testimony of this witness, inasmuch as it stands uncontradicted. The rules of evidence, in a hearing before the Board of Tax Appeals, are not different from those applied to civil procedure in the courts, except that the statutes and regulations *should be construed liberally in favor of the taxpayer.*"

In the case of *Bonwit Teller & Co. v. Commissioner,* 53 F. (2d) 381, 383, the Circuit Court of Appeals of the Second Circuit held that it was reversible error for the Board to reject the testimony of a single witness, who was uncontradicted, even though his testimony consisted solely of opinion evidence.

In *Planters' Operating Co. v. Commissioner,* 55 F. (2d) 583, the Circuit Court of Appeals for the Eighth Circuit held that it was reversible error for the Board to reject the testimony of three witnesses who were uncontradicted, even though their testimony related solely to matters of opinion. The court said (55 F. (2d) 584-5):

> "It is well established: * * *
>
> "(3) That it is reversible error for the Board of Tax Appeals to disregard competent relevant testimony when it is not contradicted. Chicago etc. Co. v. Blair (C. C. A.) 20 F. (2d) 10; Boggs & Buhl v. Commissioner (C. C. A.) 34 F. (2d) 859; Citrus Soap Co. v. Lucas (C. C. A.) 42 F. (2d) 372; Pittsburgh Hotels Co. v. Commissioner (C. C. A.) 43 F. (2d) 345; Dempster etc. Co. v. Burnet (App. D. C.) 46 F. (2d) 604; Conrad & Co. v. Commissioner (C. C. A.) 50 F. (2d) 576."

If, as we have shown, it is reversible error for the Board to reject the testimony of a single interested witness whose testimony relates to a matter of opinion, what shall be said of the action of the Board in the present case wherein it rejected the testimony of seven witnesses, all of whom were wholly credible, six of whom were disinterested, and whose testimony related to *matters of fact* within the personal knowledge of the witnesses?

VI.

The Board Misconstrued and Misapplied the Decisions Upon Which It Relied Herein.

The Board says in its opinion [Tr. 42] "the facts in this case are hardly distinguishable from those in Blair v. Roth", 22 F. (2d) 932. We submit, on the contrary, that the facts herein are so materially different from those in the Roth case that the decision of this court therein is by clear implication an authority in support of our contentions. In that case, the only issue was the taxable status of a *salary* of $5,303.90 earned by the wife during the year in question, no issue being raised with respect to the income from any property. This court explained the situation and its decision in the following statement on pages 933-934:

> "As exemplified in actual practice, the agreement of the appellee and his wife amounted to substantially this: They would contribute their earnings to a common fund, out of which their personal and community expenses would be paid; and of the savings, if any, and the property in which such savings were invested, they were to be the owners upon an equal footing. By the appellant it is not contended that, under the California statutes (sections 159, 160, Civ. Code; Wren v. Wren, 100 Cal. 276, 34 P. 775, 38 Am. St. Rep. 287; Kaltschmidt v. Weber, 145 Cal. 596, 179 P. 272; Smith v. Smith, 47 Cal. App. 650, 191 P. 60; Perkins v. Sunset T. & T. Co., 155 Cal. 712, 103 P. 190), a husband and wife domiciled in that state may not make valid agreements relating to either their separate or their community property, or that it would be incompetent, by appropriate agreement between them, to constitute the earnings of the wife her separate estate. In essence his contention is that, at most, the agreement here was for an assignment

> by each of the parties of one-half of his or her earnings to the other; that, at the instant they were received, the salaries were, by the law, impressed with the status of community property, and were taxable with reference to that status; and that the obligation to pay the tax so computed could not be escaped by contributing such incomes to the so-called partnership between the two members of the community, any more effectually than by contributing it to a like enterprise as between one member of the community and a third person. In this view we concur."

Likewise in the present case it may be conceded that the earnings of the petitioner and his wife were taxable entirely to him in the first instance during the years in which they were received. No such issue is presented in this case. The income here in question was derived solely from *investments* in real and personal property. Our contention is that *after* community earnings have been earned and received they may be transmuted by agreement of the spouses into separate property; that when they have been so transmuted and have been *invested* in real and personal property owned by the spouses as tenants in common, each spouse being the owner of an undivided one-half interest therein as his or her separate property, the income *thereafter* produced from such investments is the separate property of the two spouses, each being the owner of, and taxable on, one-half of such income.

Of particular interest in this connection is the fact that in *Earl v. Commissioner,* 10 B. T. A. 723 (affirmed by this court, 30 F. (2d) 898, and reversed by the Supreme Court, 281 U. S. 111) the Commissioner conceded that the income from *the properties purchased with the joint fund* was taxable to the husband and wife in equal proportions, even though he contended that the salaries, *as*

earned, were taxable entirely to the husband. (See *supra,* p. 24.) Likewise, in the present case, while the *earnings* may have been taxable in the first instance entirely to the husband, the *income from the properties* purchased therewith was, under the agreement, taxable to them in equal proportions on their separate returns.

The decision of this court in the *Roth* case and the decision of the Supreme Court in the *Earl* case were based upon the principle that the salaries, *as earned,* momentarily had the status of community property, even though they immediately thereafter became separate property under the agreements of the husband and wife. In both of these cases it was conceded by the Commissioner and assumed by the courts that the investments of the earnings should be treated, for tax purposes, as separate, and not as community, property.

The Board itself has distinguished the *Roth* case and the similar case of *H. A. Belcher,* 11 B. T. A. 1294 (affirmed by this court as *Belcher v. Lucas,* 39 F. (2d) 74) on this ground, as follows:

> "The agreements were that the earnings of both husband and wife were to be pooled and that they were to be the joint owners of the common fund. In those cases there was no partnership and the parties were working for others. The decisions were merely to the effect that the *earnings* of both husband and wife were community property and were taxed as such. *The earnings were not the result of the contract, but merely became subject to it after receipt. Charles Brown et al,* 13 B. T. A. 981, 985."

The Board also said in its opinion [Tr. 46] that the facts in *Pedder v. Commissioner,* 60 F. (2d) 866, are "similar to those in the instant case." Here likewise the Board was misled by its misinterpretation of the facts.

The petitioner in that case *claimed* that he and his wife were joint tenants in the property and in the income therefrom, but he himself admitted on cross-examination that there was no agreement between himself and his wife to that effect. As pointed out by this court in the opinion, the claimed agreement was nothing more than a secret intention in the mind of the husband which had not been disclosed even to the wife. Commenting upon this situation this court said (p. 869):

> "It is obvious from his testimony that in the event of his death his wife, who seemed to be wholly ignorant as to the nature of his transaction, would be unable to substantiate the claim that she took as a surviving joint tenant, property which he held in his own name and which was therefore presumptively community property."

The facts in the instant case are fundamentally different. Petitioner's wife contributed her separate property and her very substantial earnings to the venture, in the nature of a partnership, under an express agreement that she was to have an undivided one-half interest in the properties as her separate property. She was fully informed and consulted at all times with respect to the properties and assisted in their management. She was a very good business woman. [Tr. 75.] Upon the evidence in the instant case, Mrs. Anderson would not have had the slightest difficulty in establishing her separate property interest. She could accomplish this after Mr. Anderson's death if she survived him, or she could accomplish it during his lifetime. In fact, the latter is just what she did in 1932. As soon as she learned that the title to her one-half interest in these properties was not in her name of record, as she had supposed it to be, she

employed an attorney and compelled the petitioner to execute the requisite documents to vest such record title in her. [Tr. 100, 101, 111, 112.]

We are not concerned in the present case with an alleged "agreement" which was nothing more than undisclosed intention in the mind of one of the spouses. We have here definite and specific express agreements between the petitioner and his wife, first entered into early in 1916, when their income was very low and the income tax rate was only one per cent. Obviously, the purpose thereof was not to avoid or even to reduce taxes. Furthermore, the existence of the agreement was freely disclosed to all persons who had any connection with the several transactions. It was disclosed to Mr. Slattery, the father of petitioner's wife [Tr. 108]; to Mr. Adams, the auditor [Tr. 117]; to Mrs. M. J. Anderson, mother of the petitioner [Tr. 92, 93]; to Mr. Moulthrop, attorney for Mrs. M. J. Anderson [Tr. 86]; to Mr. Christie who was interested with them in the syndicates [Tr. 83], and to Dr. Janss and the officers and employees of the Janss Investment Company. [Tr. 69-73.]

In the *Pedder* case there was every reason for the Board and the court to conclude that the claimed "agreement" was a mere device for the avoidance of taxes. In the present case there is every reason for concluding that the agreements testified to were entered into in the highest good faith in order to vest Mrs. Anderson with an undivided one-half interest in the properties as her separate property. Such agreement was most reasonable since Mrs. Anderson, through her services and the investment of her separate property, was fully as important a factor in the production of the earnings and the acquisition of the properties as was the petitioner.

VII.

The $3200.00 Invested by Petitioner's Wife in the Beverly Hills Lots Did Not Lose Its Identity Through Being Commingled With Other Investments.

The Board say [Tr. 41]:

> "The evidence is to the effect that the petitioner's wife received approximately $20,000.00 from this source (gifts from her father) after her marriage to the petitioner. However, these funds were comingled with their other earnings and investments so that their identity was lost."

The Board's conclusion in this behalf is correct except as to the $3,200.00 which was invested by petitioner's wife in the purchase of the five Beverly Hills lots. Those lots are still owned by petitioner and his wife and the rentals therefrom formed a substantial portion of the income which is here in question. The $3,200.00 from her separate funds thus invested by Mrs. Anderson in the purchase of those lots, which are still owned by the spouses, certainly did not lose its identity thereby.

This point is not important except that it shows that the Board's decision herein is incorrect even according to the Board's theory of the law. If we should assume, as did the Board, that the agreements between the spouses were ineffective to change the status and incidents of the marital properties, it would follow inevitably that Mrs. Anderson's investment in these lots, which was her separate property to begin with, is still her separate property. The purchase price of those lots was $13,200.00 of which she contributed $3,200.00 from her separate funds. Therefore, according to the Board's theory, she would be the

owner as her separate property of an undivided 32/132 of this property, and this portion of the income therefrom would, even according to the Board's theory, be taxable to her and not to her husband. She would retain her proportionate interest in those lots, even though the improvements thereon had been made with community funds. *Shaw v. Bernal,* 163 Cal. 262, 267; *Seligman v. Seligman,* 85 Cal. App. 683, 688-9.

Of course we are not contending that this is the true situation. The uncontradicted evidence discloses that this investment was made by her pursuant to an agreement with her husband that each should be the owner of an undivided one-half interest in those lots. Under all of the authorities that agreement was legally effective, and the result thereof is that each spouse is entitled to one-half of the income from those lots and is chargeable with one-half thereof for tax purposes.

VIII.

Petitioner Is Entitled to Judgment on the Findings of Fact

The questions involved upon this appeal are solely questions of law. This court is not being asked to weigh the evidence or to determine conflicts therein. The evidence is all one way and there are no conflicts. The evidence is all in favor of the petitioner and the findings of fact (so far as they go) are likewise all in favor of the petitioner. It is the contention of the petitioner that the Board erred in its conclusions of law from the evidence and the facts found. Questions of the ultimate conclusion that may be drawn from the facts and whether there is substantial evidence to support such conclusion are ques-

tions of law for this court. (*Washburn v. Commissioner* (C. C. A. 8th) 51 F. (2d) 949.) Even a direct finding of fact, which involves the construction of a statute, presents a mixed question of law and fact and is not conclusive upon the appellate court. The Board of Tax Appeals cannot by its findings of fact take from the appellate courts their power to construe a statute and apply it to the facts. *Washburn v. Commissioner, supra.*

It is our contention that the facts found by the Board *require* the rendition of judgment in favor of the petitioner herein. The Board did not find expressly herein upon the ultimate issue of fact as to whether petitioner's wife was the owner of one-half of the properties here involved as her separate property. That issue was expressly tendered by the petition. It is alleged therein that "upon the receipt of said $10,000.00, petitioner agreed with his wife that $5.000.00 belonged to her as her separate property, * * *" [Tr. 15]; that "upon the purchase of said lots the petitioner and his wife agreed that they should own said lots and all income from or accretions thereto as tenants in common" [Tr. 16]; that "petitioner agreed with his wife that one-half of said compensation (salary and profits from the hotel) was to be treated as earned by her and should constitute her separate property" [Tr. 17]; that "in entering into the above agreements, it was expressly understood between petitioner and his wife * * * that she was to own as tenant in common and as her separate property one-half of the interests so acquired * * * (the Janss and Christie properties) and was to share equally with him in all losses and/or profits realized therefrom" [Tr. 19, 20]; that "all properties owned by petitioner and

his wife during the taxable years 1924 and 1925 belonged equally, half and half, to them as their separate property, as tenants in common." [Tr. 21.]

If findings were required which would be expressly and completely responsive to those issues, the Board's omission to find thereon was reversible error, and resort may not be had by the reviewing court to the opinion of the Board to eke out the findings of fact. *Kendrick Coal & Dock Co. v. Commissioner* (C. C. A. 8th) 29 F. (2d) 559. The Board did not find that the properties here in question were community property. It follows that the decision cannot be sustained, because it is not supported by the findings of fact. If the Board had so found, the decision would have to be reversed for the reason that such finding would be wholly contrary to the evidence and wholly contrary to the findings of probative facts. Whether the findings of fact are supported by substantial evidence is a question of law for the reviewing court. *Kendrick Coal & Dock Co. v. Commissioner, supra; Washburn v. Commissioner, supra.*

It is our contention that even though the findings of fact herein do not expressly cover all of the issues tendered, nevertheless the facts which were found by the Board are adequate to sustain a judgment in favor of the petitioner and are sufficiently complete to *compel* such judgment. The Board expressly found as a fact that the agreements had been made as alleged in the petition. Thus: "* * * it being agreed between them, however, that the commission (of $10,000.00) should belong one-half to each" [Tr. 31]; "It was specifically agreed that she would share equally with petitioner the yearly salary and the profits, if any" (from the hotel) [Tr. 32]; "From

time to time the petitioner and his wife made other investments with their joint earnings and profits, with the understanding and agreement that they were equal owners therein and that each was entitled to receive one-half of the profits and was liable for one-half of the losses." [Tr. 34.] There is absolutely nothing in the findings which is inconsistent with any of the foregoing.

The foregoing findings of fact, supported by the uncontradicted evidence, are not challenged by either party to this appeal. They are, therefore, conclusive upon the court. When read in the light of the remaining facts found by the Board they compel the conclusion that petitioner's wife was the owner of an undivided one-half interest in all of the properties which produced the income here in question. It is submitted that this conclusion entitles the petitioner to judgment herein.

It is true that the Board did not expressly find that petitioner's wife owned one-half of the properties *as her separate property,* but this omission is immaterial for the reason that such conclusion follows inevitably as a conclusion of law from the facts found. If she was the owner of an undivided one-half interest in those properties *her interest therein must have been her separate property.* It could not have been community property for the reason that under the law which then obtained in California it was the established doctrine "that during the marriage the husband was the sole and exclusive owner of all the community property and that the wife had no title thereto, nor interest or estate therein, other than a mere expectancy as heir, if she survived him." *Roberts v. Wehmeyer,* 191 Cal. 601, 607. Therefore it follows inevitably from the facts found by the Board that peti-

tioner's wife was the owner as her separate property of an undivided one-half of all the properties which produced the income here in question. It is wholly immaterial for the purposes of this proceeding whether she owned such half interest as tenant in common or as joint tenant. In either event she was entitled to one-half of the income therefrom and the husband was chargeable for tax purposes with no more than one-half of such income.

It follows that whichever view may be taken of the findings (as to whether or not they adequately respond to all of the issues) in either case the decision of the Board must be reversed and judgment rendered for petitioner upon the probative facts found by the Board.

Respectfully submitted,

Louis W. Myers,
Joseph D. Peeler,
Ward Loveless,

Solicitors for Petitioner.

APPENDIX

ASSIGNMENTS OF ERROR.

The petitioner, as a basis for review, makes the following assignments of error:

1. The Board of Tax Appeals erred as a matter of law in ordering and deciding that there was a deficiency for the year 1924.

2. The Board of Tax Appeals erred as a matter of law in ordering and deciding that there was a deficiency for the year 1925.

3. The Board of Tax Appeals erred in its decision and determination as a fact that the properties owned by petitioner and his wife during each of the years 1924 and 1925 had the status of community property, under the laws of the State of California.

4. The Board of Tax Appeals erred in its decision and determination as a conclusion of law that the properties owned by petitioner and his wife during each of the years 1924 and 1925 had the status of community property, under the laws of the state of California.

5. The Board of Tax Appeals erred in its decision and determination as a fact that there was no valid enforceable agreement between the petitioner and his wife that their income and property was owned by them otherwise than as community property, during the years 1924 and 1925.

6. The Board of Tax Appeals erred in its decision and determination as a conclusion of law that there was no valid enforceable agreement between the petitioner and his wife that their income and property was owned by

them otherwise than as community property, during the years 1924 and 1925.

7. The Board of Tax Appeals erred in its decision and determination as a fact that petitioner's wife did not own, as her separate property, an undivided one-half interest in all the properties owned by the petitioner and his wife during the years 1924 and 1925.

8. The Board of Tax Appeals erred in its decision and determination as a conclusion of law that petitioner's wife did not own, as her separate property, an undivided one-half interest in all the properties owned by the petitioner and his wife during the years 1924 and 1925.

9. The Board of Tax Appeals erred in its decision and determination as a fact that all of the income from said properties during the years 1924 and 1925 was taxable on the separate return of the petitioner.

10. The Board of Tax Appeals erred in its decision and determination as a conclusion of law that all of the income from said properties during the years 1924 and 1925 was taxable on the separate return of the petitioner.

11. The Board of Tax Appeals erred in its decision and determination as a fact that petitioner's wife was not subject to tax on her separate return with respect to one-half of the income from said properties during the years 1924 and 1925.

12. The Board of Tax Appeals erred in its decision and determination as a conclusion of law that petitioner's wife was not subject to tax on her separate return with respect to one-half of the income from said properties during the years 1924 and 1925.

13. The Board of Tax Appeals erred in its decision and determination as a fact that there was not an express

agreement, evidenced by an instrument in writing, between the petitioner and his wife, under which she acquired in 1923 and held during the years 1924 and 1925, as her separate property, an equal undivided interest with petitioner in the Janss Investment Co. and Charles H. Christie real estate ventures.

14. The Board of Tax Appeals erred in its decision and determination as a conclusion of law that there was not an express agreement, evidenced by an instrument in writing, between the petitioner and his wife, under which she acquired in 1923 and held during the years 1924 and 1925, as her separate property, an equal undivided interest with petitioner in the Janss Investment Co. and Charles H. Christie real estate ventures.

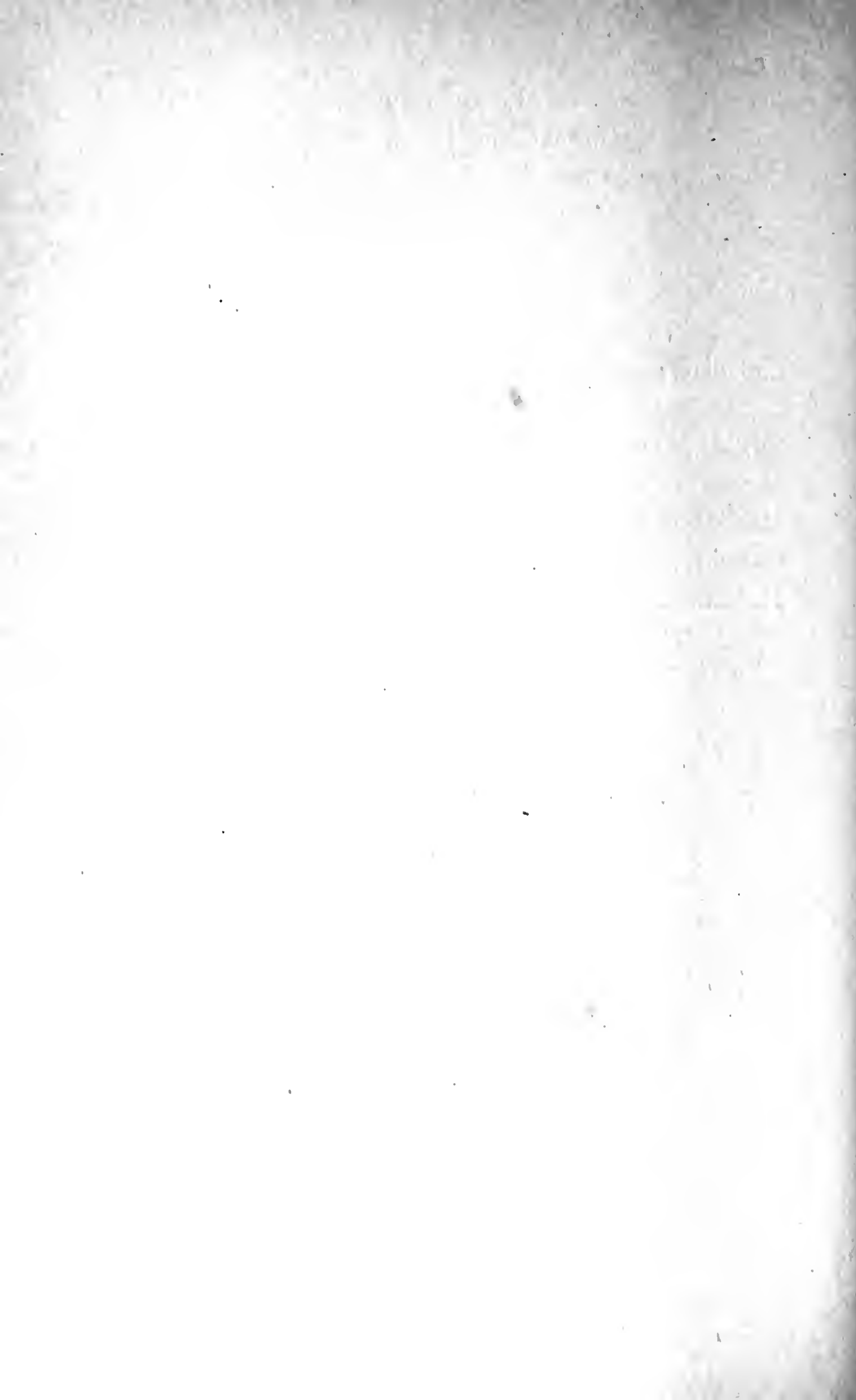
15. The Board of Tax Appeals erred in its decision and determination as a fact that petitioner was taxable on his separate return with respect to all the income received by petitioner and his wife from said real estate ventures during 1924 and 1925.

16. The Board of Tax Appeals erred in its decision and determination as a conclusion of law that petitioner was taxable on his separate return with respect to all the income received by petitioner and his wife from said real estate ventures during 1924 and 1925.

17. The Board of Tax Appeals erred in its decision and determination of a deficiency of $19,036.61 for the taxable year 1924.

18. The Board of Tax Appeals erred in its decision and determination of a deficiency of $9,752.99 for the taxable year 1925.

19. The Board erred in rendering decision for the respondent.



No. 7307

In the United States Circuit Court of Appeals for the Ninth Circuit

STANLEY S. ANDERSON, PETITIONER

v.

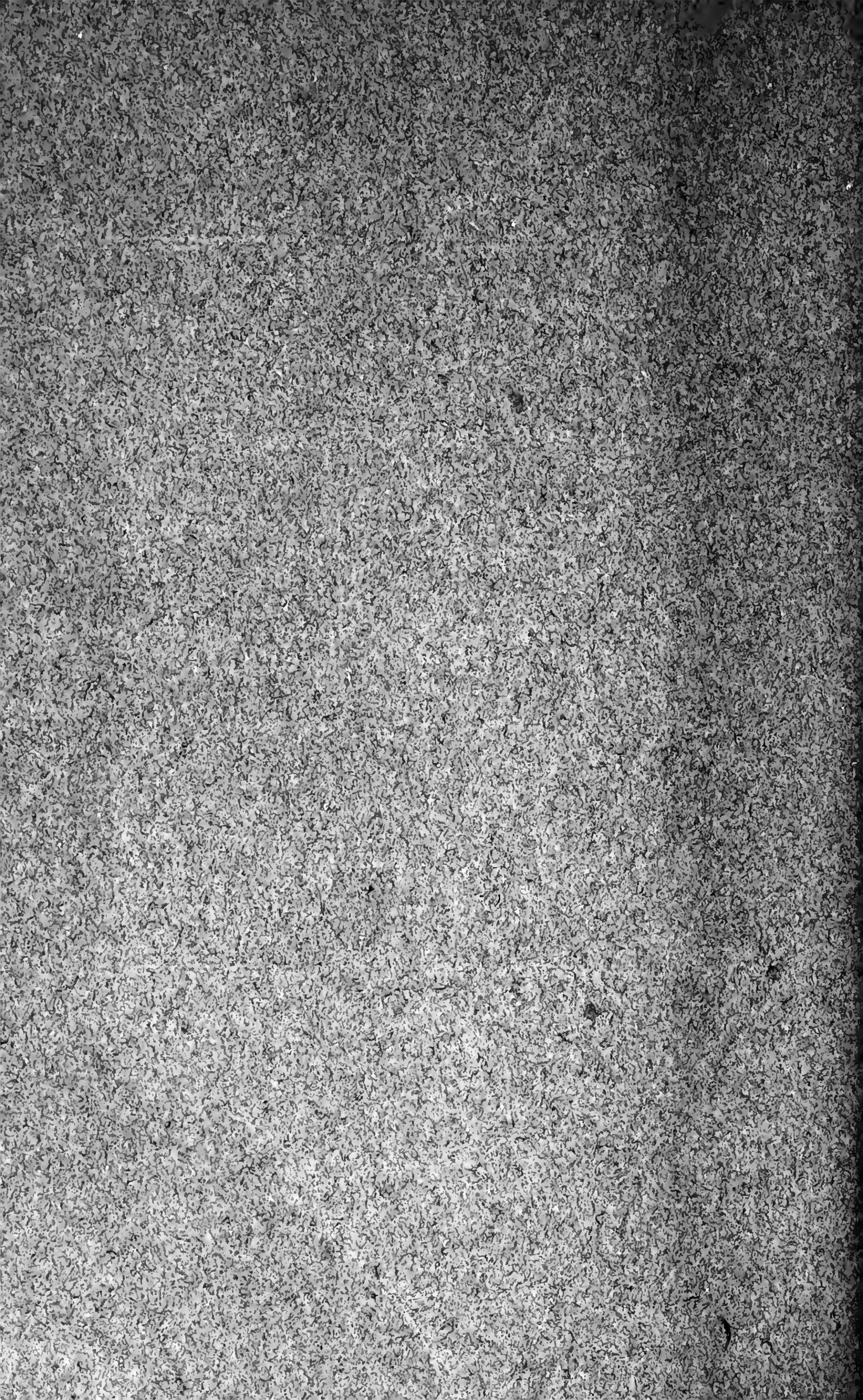
GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

ON PETITION FOR REVIEW OF DECISION OF THE UNITED STATES BOARD OF TAX APPEALS

BRIEF FOR THE RESPONDENT

FRANK J. WIDEMAN,
Assistant Attorney General.
SEWALL KEY,
JOHN G. REMEY,
Special Assistant to the Attorney General.

FILED
MAR 14 1934



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In the United States Circuit Court of Appeals for the Ninth Circuit

No. 7307

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v.

Guy T. Helvering, Commissioner of Internal Revenue, respondent

ON PETITION FOR REVIEW OF DECISION OF THE UNITED STATES BOARD OF TAX APPEALS

BRIEF FOR THE RESPONDENT

OPINION BELOW

The only previous opinion is that of the United States Board of Tax Appeals (R. 38–48), which is reported in 28 B.T.A. 179.

JURISDICTION

This appeal involves income taxes for the years 1924 and 1925 amounting to $19,036.61 and $9,752.59, respectively, and is taken from an order of redetermination entered May 26, 1933 (R. 48). This appeal is brought to this Court by a petition for review filed August 17, 1933 (R. 49–63), pursuant to the provisions of the Revenue Act of 1926,

c. 27, 44 Stat. 9, 109–110, Sections 1001, 1002, and 1003, as amended by Section 1101 of the Revenue Act of 1932, c. 209, 47 Stat. 169.

QUESTION PRESENTED

Whether the income from certain investments is taxable to the petitioner as income from community property or is taxable to petitioner's wife as income from her separate property.

STATUTES INVOLVED

They will be found in the appendix, *infra,* p. 22.

STATEMENT

The facts found by the Board are as follows (R. 30–38):

The petitioner and wife, Marguerite S. Anderson, citizens of the State of California, were married in 1914. The petitioner at that time was employed as assistant manager of the Beverly Hills Hotel, which was owned by his mother, Margaret Anderson, at a salary of $3,000 per annum. At the time of their marriage neither the petitioner nor his wife owned any property of consequence. The petitioner's employment with the hotel continued until the World War, when he went abroad.

From 1914 to 1923, inclusive, the petitioner's wife acted as a hostess for the hotel, devoting all of her time to that business. Her duties were to provide entertainment and to arrange social functions for the guests and to secure new patrons. The hotel catered to the wealthy class.

At the time of her marriage, the petitioner's wife received a a gift of $5,000 from her father, J. H. Slattery. Thereafter, for five or six years, she received additional gifts from him, aggregating about $20,000. This money was used for various purposes, including household expenses.

In 1916 the petitioner's wife learned that a friend of hers was interested in buying an estate in the Beverly Hills section. She and the petitioner located a desirable piece of property and negotiated the sale, receiving a commission of $10,000, which was paid to the petitioner, it being agreed between them, however, that the commission should belong one half to each.

In May 1916 the petitioner and his wife purchased five vacant lots in Beverly Hills at a total cost of $13,200, which amount they paid with the $10,000 commission referred to above and $3,200 which the petitioner's wife secured from her father. The deeds to the lots were taken in the petitioner's name and so remained until May 1932 when new deeds were made to the petitioner and his wife as tenants in common.

While the petitioner was overseas and prior to his return in 1919 the petitioner's wife and his mother entered into an oral agreement whereby she, the petitioner's wife, and the petitioner, upon his return, were to take over the entire management of the hotel and were to receive a stipulated yearly salary of $3,000 plus one half of the net

profits. As a consideration for this agreement the petitioner's wife was to render full-time services to the hotel. It was specifically agreed that she would share equally with the petitioner the yearly salary and the profits, if any. Under this contract, the petitioner and his wife received profits over the period 1919 to 1923, inclusive, of approximately $140,000. This amount, together with the salary of $3,000 per year, was paid to the petitioner by checks drawn on the hotel by himself as manager and was deposited by him in a joint bank account for himself and wife.

In September 1923 the petitioner, with the knowledge and consent of his wife, entered into agreements with the Janss Investment Company and Charles H. Christie for the acquisition of certain undivided interests in two real-estate subdivisions. The contracts were signed by the petitioner and deeds were made out in his name. The total investment therein of the petitioner and his wife was approximately $56,000, which was paid, for the most part, out of the profits from the hotel. Soon after this transaction the petitioner's wife asked him to prepare a written memorandum defining his and her respective rights in the investment. Accordingly, the petitioner, on September 5, 1923, prepared and delivered to his wife the following letter (R. 33–34):

> Confirming our conversation relative to the Janss Investment and Charlie Christie land deal.

Charlie and I agree to purchase from Janss 120.5 acres for $180,750 (for one-half interest, Janss retaining one half), payable $60,250 cash in September and October, and notes for the balance of $120,500. On this deal I today paid $5,000 on the September installment. I also entered into an agreement to purchase from Charlie Christie a ¼ interest in 107 acres, the total price of the acreage being $320,000 and our ¼ will amount to $80,250. Under the agreement by which Charlie is buying this land from Janss he is to pay $107,000 cash and notes for $214,000. The cash payments are to be made in September and October and I today paid $6,250, which is ¼ of the cash payment due in Sept.

I understand from you that you agree to these transactions and agree to payment of your proportion of the cash payments from any funds now held jointly by us, and that you assume liability for your proportion of future payments, such liability to attach to your separate funds as well as those held jointly by us.

It is the belief of Janss and Charlie that with the placing of this property on the market, the notes will be paid off from sales and we will not be called upon for cash to meet same.

Should you for any reason have occasion, in my absence or in case of any misunderstanding arising later, to secure further details relative to this, Dr. J. will give you same.

A copy of the above letter was filed at the office of the Janss Investment Company, and Charles H. Christie also was advised of its contents.

In the Janss Investment Company's books an account was kept in the petitioner's name until January 1929 when the business was taken over by a newly organized corporation. In the books of the new company separate accounts were set up for the petitioner and his wife showing them owners of separate equal interests.

From time to time the petitioner and his wife made other investments with their joint earnings and profits, with the understanding and agreement that they were equal owners therein and that each was entitled to receive one half of the profits and was liable for one half of the losses.

The petitioner's wife at all times took an active interest in the affairs of the real-estate syndicate. She frequently discussed matters of policy with the managers and gave her approval to the plans for the development and sale of the property. She signed all the deeds and mortgages and other papers of that character. Edwin Janss, president of the Janss Investment Company, and Charles H. Christie both understood that Marguerite S. Anderson and the petitioner owned equal interests in their investment. In August 1926 the Janss Investment Company deeded back to "Stanley S. Anderson and Marguerite S. Anderson" an undivided one fourth interest in thirty-seven acres of the syndicate property which had not been sold.

In February 1924 the petitioner and his wife executed and delivered to Edwin Janss and Harold Janss a general power of attorney, which was duly recorded. On January 27, 1925, the petitioner's wife executed and delivered a similar power of attorney to the petitioner.

In the latter part of 1924 the auditor for the Beverly Hills Hotel, upon request of the hotel bookkeeper, opened up a separate set of books for the petitioner as of January 1, 1925. Near the end of 1926 the petitioner inquired if his wife's share of the earnings from the "Young Building" was being credited to her and, being informed that it was not, had the auditor open an account entitled "Joint M. S. Anderson" in which was set up the Young's Building at a valuation of $202,788. Also, at about that time, another account was opened as of January 1, 1926, entitled "Janss Inv. Co. Joint M. S. Anderson." Also, at about that time, another account was set up for "Marguerite S. Anderson."

On June 8, 1932, the petitioner and his wife, upon the advice of her attorney, executed a memorandum agreement providing in part as follows (R. 36–37):

> WHEREAS the parties hereto were married in 1914 and at the time of said marriage neither had any property, and shortly thereafter an agreement was made between them to the effect that all property acquired by either after the date of their marriage, whether separate or community, should be

deemed to be and should constitute the property of both of them as tenants in common, each owning an undivided one-half interest therein; and

WHEREAS about this time or shortly thereafter Mrs. Anderson received from her father, as a gift to her, various sums of money aggregating in all approximately $20,000.00, which she turned over to Mr. Anderson when and as received to invest under said agreement; and

WHEREAS Mr. Anderson used said money, together with various earnings of both of them and various property which he received by gift from his mother, and proceeds and avails of all of said property, in purchasing, owning, and selling real estate and other property, and for the purpose of convenience has carried the legal title to all property so acquired in his own name, but as trustee for himself and Mrs. Anderson as tenants in common, and said property has at all times constituted and does now constitute the property of the parties hereto as tenants in common, each owning an undivided one half interest therein; and

WHEREAS the parties desire to confirm the agreement between themselves hereinbefore referred to and to reduce the same to writing and thenceforward to have the legal title to all real property acquired by them during their said marriage, from whatever source, held in their joint names as tenants in common pursuant to said agreement:

Now, Therefore, it is Mutually Agreed by and between the parties hereto as follows:

1. All property whatsoever, whether separate or community, heretofore or hereafter acquired by either of the parties hereto since and during their marriage and howsoever the legal title thereto may be held, constitutes the property and is owned by them jointly as tenants in common, each owning an undivided one-half interest therein as his and her respective separate property, and none of said property, no matter how the legal title thereto may be held, is or shall be owned in any other way than as tenants in common, each owning an undivided one-half interest therein as his and her respective separate property.

For the calendar years 1920 to 1923, inclusive, the petitioner and his wife filed joint returns which were prepared for them by the hotel auditor. The petitioner informed the auditor in 1920 that one half of the profits from the hotel belonged to his wife separately, but the auditor advised him that it was necessary under the law and the Commissioner's regulations to report all the income in joint returns. For the years 1924 and 1925 the petitioner and his wife filed separate returns in which they each reported one half of their entire income. The respondent in his audit of the returns for 1924 and 1925 has held the petitioner liable for taxes upon the entire amount of the income reported in

both the returns. The items of income which the petitioner alleges, in his amended petition, were erroneously included in his income and which are taxable to his wife, are as follows:

1924

Interest from notes, mortgages, and bank deposits	$1,698.63
Rents from real property	9,876.18
Profits on sales of stocks and real property	6,768.19
Dividends from stocks	2,000.00
Profit from joint ventures in real estate	29,506.56
Capital net gain	16,747.00

1925

Interest from notes, mortgages, and bank deposits	$964.78
Rents from real property	5,342.80
Dividends on stocks	4,751.83
Profit from joint ventures in real estate	28,541.55
Loss from joint ventures in real estate	2,162.89

The Board approved the Commissioner's determination and the petitioner appeals.

SUMMARY OF ARGUMENT

It is the contention of the petitioner that the properties held in his name during the taxable years were owned by himself and his wife equally as tenants in common and accordingly one half of the income is taxable to her on her separate return.

Under the law of California at the time of the acquisition of the property from which the income here involved was derived, all the property acquired by husband or wife after marriage was presumed to be community property subject to the disposition of the husband with all the powers of own-

ership. The income from such property was the income of the husband.

Petitioner seeks to overcome this presumption by alleging the existence of a mutual agreement vesting in the wife a separate property in one half of their earnings and in one half of the investments made with such earnings. The Board found that no such agreement existed prior to the one formerly entered into in 1932 just a few days before the trial of this case. A careful analysis of the evidence does not compel a contrary conclusion.

ARGUMENT

The income here involved was derived from community property and not from the separate property of petitioner's wife

Petitioner contends that his wife was the owner of an undivided one-half interest in all the property which produced the income here involved in that legally sufficient agreements constituted them tenants in common, each owning an undivided one-half interest as his or her separate property. The Board decided that the evidence failed to establish an agreement whereby there was vested in her a separate one-half interest in the property from which the income was derived.

On June 8, 1932, a few days before the trial of this case before the Board, petitioner and his wife executed a formal agreement defining the separate interests of each in all their property. This of course can have no effect upon the community prop-

erty or the income therefrom in the taxable years 1924 and 1925. In those years all property acquired after marriage except that acquired by gift, bequest, devise, or descent, was community property. The income of both spouses was returnable by and taxable to the husband. *Blair* v. *Roth,* 22 F. (2d) 932 (C.C.A. 9th), certiorari denied, 277 U.S. 588; *Pedder* v. *Commissioner,* 60 F. (2d) 866 (C.C.A. 9th). Petitioner has sought to alter this property relationship by attempting to prove the existence of an agreement purporting to vest in her a separate property in the assets producing the income here in question. It is submitted that the evidence does not establish such an agreement.

The earnings and profits of the petitioner and his wife for the years 1916 to 1923 totaled approximately $165,000. Presumably this amount was reported by the petitioner in his returns for those years since it was all taxable to him as community income. A part of this income was invested in real estate, stocks, mortgages, etc., which properties produced in 1924 and 1925 the income here in question. Petitioner contends that it was received by his wife from her separate property and is therefore taxable to her. He argues that after community earnings have been received and taxed to the husband, they may be transmuted by agreement of the spouses into separate property, that when they have been so transmuted and have been invested in real and personal property owned by

the spouses as tenants in common, each spouse being the owner of an undivided one-half interest therein as his or her separate property, the income thereafter produced from such investments is the separate property of the two spouses, each being the owner of and taxable on one half of such income. This argument presupposes a specific express agreement between petitioner and his wife to vest the latter with an undivided one-half interest in the income or the property as her separate estate. The Board held that the understanding, if one there was, was merely that their income and property should be owned by them "on an equal footing", citing *Blair* v. *Roth, supra.*

In 1916 petitioner received $10,000 representing a commission for services rendered by himself and his wife in negotiating a sale of real estate. Petitioner contends that half of this commission was by agreement the separate property of his wife. They so testified in reply to highly leading questions but the facts negative the existence of any such agreement. The petitioner received the commission, he did not divide it with his wife and she did not ask for it. The only way he could have separated any part of this sum from the community fund was to make a gift of it to her. But there was no gift. There was no delivery. The entire sum plus $3,200 received by Mrs. Anderson from her father was invested in five lots. Both testified that they expressly agreed in 1916 that she was to own

a half interest as her separate property in the lots (R. 109). But the evidence again fails to support this statement. All the lots were taken in petitioner's name (R. 90–91). This fact petitioner's wife did not know until a short time before the trial (R. 111), when new deeds were made to the petitioner and his wife as tenants in common (R. 418). There was no division of profits, no accounting of any additional amounts contributed by each for improvements on the lots. The Young's Building was erected on a part of the five lots and it was not until 1926 that an account for this building was set up and then it was a joint account entitled "Joint M. S. Anderson" (R. 35). From 1920 to 1923, inclusive, profits amounting to $140,000 were derived by the petitioner and his wife from the operation of a hotel. Again they testified that it was expressly agreed that she was to have one half of this amount as her separate property (R. 93, 110), though there is no evidence of a gift or of an actual division of this community property. Checks representing their share of the hotel profits were always made out to the petitioner and the proceeds controlled by him. No record of her separate property in such profits was kept. They were the joint earnings of both and accordingly community property. In 1923 petitioner entered into an agreement with the Janas Investment Company and Charles H. Christie for the acquisition of an interest in two real-estate subdivisions. Petitioner

and his wife testified that there was an express agreement that she would own a one half interest in the investment as her separate property (R. 95, 113). It should be noted that this is the fourth so-called "express agreement" as to separate properties, the other three relating to the real-estate commission, the five lots and the hotel earnings, this despite the wife's testimony that it was understood at all times that one half of the property they might acquire and one half of the money that they might make was to be her separate property (R. 102). Petitioner himself testified that every investment he made was a joint agreement (R. 111).

The contracts for the purchase of an interest in the real-estate subdivisions were signed by the petitioner and deeds were made out in his name. The investment therein of petitioner and his wife was $56,000, most of which came out of the profits from the hotel. If Mrs. Anderson did not acquire a separate property in the earnings and profits of the hotel it is clear that she could not have contributed one half of the capital invested in the subdivision. No gift or express agreement creating a separate property in the real estate is disclosed prior to the one of June 8, 1932. The deeds were in petitioner's name and though she joined with her husband in signing notes, mortgages, and assignments, she alleges that she never noticed that her name was not on these instruments. No accounts or records were kept indicating the inten-

tion to create a separate estate in the wife. It was not until 1926 that the Janss Investment Company set up a joint account entitled "Janss Investment Company Joint M. S. Anderson." Prior to that an account was carried in petitioner's name only. Janss testified that for his protection he required Mrs. Anderson's signature to every document (R. 73). This of course does not prove a separate property in her. The letter of September 5, 1923, relied upon by the petitioner, is not nor does it purport to be an agreement creating a separate property in the wife in the real estate subdivisions.

He explains therein the land deal and states that he understands that she agrees to the payment of her proportion of the cash payments from any funds then held jointly by them. He also understands that she remains liable for her proportion of future payments, such liability to attach to her separate funds as well as those held jointly by them. This letter was written to Mrs. Anderson after the petitioner had contracted and obligated himself alone. No conveyance to her of a separate property in the real estate is disclosed. On the other hand, the initial payments due under the contracts were to come out of funds held jointly; that is, out of community funds. Payments to meet subsequent liabilities were to come out of either separate funds or those held jointly. Whether they were actually paid out of the former or the latter is not disclosed. If the former they of course came out

of community funds; if out of the latter the amount withdrawn is not disclosed. It is submitted that the evidence does not disclose an agreement, and that the earnings of each constituted the separate property of the earner or that the investments made with such earnings were to be held as joint tenants.

At most there was an understanding that the earnings of both should be contributed to a common fund and that they would share alike in the profits from investments acquired with such common funds. Such an understanding does not overcome the presumption that such earnings and profits are community funds. *Pedder* v. *Commissioner, supra.* In that case the husband placed the earnings from his law practice in joint bank accounts. These funds he invested in income producing properties, all of which he held in his name. He sought to segregate the income which he collected from these investments into two equal parts, one half taxable to himself and the other half to his wife. When confronted with the presumption that the investment property was community property, he relied upon a showing that the funds invested in the property were at one time deposited by him in a joint bank account subject to check by either party and upon the testimony that the balance was to be paid to the survivor in case of death. His contention was that these facts created a joint tenancy. This Court held that though it may be con-

ceded that community funds deposited by the husband in a joint bank account accompanied by an agreement of the parties in writing that the funds were subject to be withdrawn by either party during their joint lives and by the survivor upon the death of one of the spouses, are impressed with the character of a joint tenancy, the facts disclosed were not sufficient to overcome the presumption that the property was community property. In the instant case there was no agreement in writing prior to 1932. The earnings of both husband and wife were received by petitioner and were always under his dominion and control. The investments were held in his name and there is no record of any accounting to her of any of the income therefrom. The disclosed facts negative the testimony of petitioner and his wife that she had a separate vested one-half interest in either the earnings or the investments.

In *Blair* v. *Roth, supra,* the wife alleged that the agreement was that she should continue to have control of her earnings. This allegation the court said was not supported by the evidence. There was no writing. The court said that the agreement was merely that they would contribute their earnings to a common fund out of which their personal and community expenses would be paid and of the savings, if any, and the property in which such savings were invested, they were to be equal owners upon an equal footing. It was held that such agreement was ineffective to alter the community

property status. In the instant case the facts appear to go no further toward establishing a separate property in the wife than those in *Blair* v. *Roth.*

Petitioner concedes for the purpose of this appeal that the earnings of petitioner and his wife in prior years were properly taxable to the husband as community income for the taxable years in which received. In this there appears to be an inconsistency in view of the statements that agreements existed creating separate properties in the income earned by each. Petitioner might well have urged in those years that such agreements were effective to arrest the earnings at the threshold of the community fund and thus show that liability for the tax should not have fallen upon the husband alone. It may be stated parenthetically that joint and not separate returns were filed by husband and wife for the years 1920 to 1923, inclusive.

An oral agreement was relied upon in *Belcher* v. *Lucas,* 39 F. (2d) 74 (C.C.A. 9th), to show a wife's separate property in her own earnings. By agreement it was understood that both would continue in business, that all earnings, income, and properties acquired by both during their married life would be owned by them fifty-fifty, that they would be equal partners in all respects, equally owning and enjoying their earnings and acquisitions of property. In accordance with this agreement their property, accumulations, earnings, and

incomes were continually since the date of marriage combined in a common fund from which all expenses of both have been paid as evidenced by joint bank accounts created immediately after marriage where all salaries, earnings, and profits from whatever source were deposited and against which account each was authorized by written contract with the banking institution to draw. Upon these facts this Court refused to hold that the wife had a separate property in her earnings. A similar conclusion must be reached in this case upon facts less favorable to the taxpayer. If it is concluded that the earnings and profits of petitioner and his wife were community earnings taxable to the husband, the case is narrowed to a search for an agreement creating a separate property in the wife in such earnings and profits when they were invested in income-producing property, or an agreement vesting in the wife a separate property in the investments themselves. It is submitted that the above analysis of the evidence fails to establish the existence of either kind of agreement.

Mrs. Anderson contributed $3,200 to the purchase of five lots. This amount was a gift from her father and was her separate property and the income therefrom is taxable to her. The lots were purchased in 1916 for $13,200. Petitioner contends that 32/132 of the income received in 1924 and 1925 from these lots is taxable to her. There is no proof that she is entitled to that fractional part of the income. From 1916 on extensive improve-

ments were made to the property from community funds as, for example, the Young's Building. Hence the denominator must be increased making her fractional share very much smaller than 32/132. How much smaller the record fails to disclose. This failure of proof must defeat petitioner's claim. *Burnet* v. *Houston,* 283 U.S. 223.

This Court may consider findings of fact which appear in the opinion of the Board. *California Iron Yards Co.* v. *Commissioner,* 47 F. (2d) 514 (C.C.A. 9th); *Commissioner* v. *Crescent Leather Co.,* 40 F. (2d) 833 (C.C.A. 1st). Is is submitted that the evidence does not compel the conclusion that the property from which the income in question was derived was held by petitioner and his wife as joint tenants. With the probative force of factual inferences reasonably drawn this Court can have no concern. *Crowell* v. *Commissioner,* 62 F. (2d) 51 (C.C.A. 6th). It cannot be said upon this record that the respondent's determination was so clearly wrong as to have required a contrary finding by the Board.

CONCLUSION

The decision of the Board is correct and should be affirmed.

FRANK J. WIDEMAN,
Assistant Attorney General.

SEWALL KEY,
JOHN G. REMEY,
Special Assistants to the Attorney General.

MARCH 1934.

APPENDIX

Revenue Act of 1924, c. 234, 43 Stat. 253:

SEC. 213. * * *

(a) The term "gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service * * * of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever (U.S.C., Title 26, Sec. 954).

Section 213 (a) of the Revenue Act of 1926, c. 27, 44 Stat. 9 (U.S.C.App., Title 26, Sec. 954), is identical.

U. S. GOVERNMENT PRINTING OFFICE: 1934

No. 7307.

In the

United States

Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

4

Stanley S. Anderson,

Petitioner,

vs.

Commissioner of Internal Revenue,

Respondent.

PETITIONER'S REPLY BRIEF.

Louis W. Myers,

Joseph D. Peeler,

Ward Loveless,

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Solicitors for Petitioner

FILED

MAR 22 1934

PAUL P. O'BRIEN,

Parker, Stone & Baird Co., Law Printers, Los Angeles.

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Petitioner,
vs.
Commissioner of Internal Revenue,
Respondent.

REPLY BRIEF.

The legal points and authorities involved in this proceeding have been covered fully in our opening brief and apparently are not controverted by the respondent. However, the brief for respondent is so at variance with our understanding of the Board's findings of facts and basis of decision that further analysis and comments appear advisable.

1. The Real Basis of the Board's Decision.

Respondent contends that the only issue before the Board was one of fact, whether there was any agreement between petitioner and his wife that she should have a separate property interest, and concludes that the Board

found *as a matter of fact* that there was no such agreement. This, we submit, is incorrect.

As set forth in our opening brief, the Board found expressly that there was such an agreement between the petitioner and his wife, as evidenced by the following quotations from the Board's findings of fact:

> "* * * it being agreed between them, however, that the commission should belong one-half to each." [Tr. 31.]
>
> "It was specifically agreed that she would share equally with the petitioner the yearly salary and the profits, if any." [Tr. 32.]
>
> "* * * and was deposited in a joint bank account for himself and his wife." [Tr. 32.]
>
> "Soon after this transaction the petitioner's wife asked him to prepare a written memorandum defining his and her respective rights in the investment" (referring to the letter of Sept. 5, 1932). [Tr. 33.]
>
> "In the books of the new company separate accounts were set up for the petitioner and his wife, showing them owners of separate equal interests." [Tr. 34.]
>
> "From time to time the petitioner and his wife made other investments with their joint earnings and profits, with the understanding and agreement that they were equal owners therein and that each was entitled to receive one-half of the profits and was liable for one-half of the losses." [Tr. 34.]
>
> "Edwin Janss, president of the Janss Investment Co., and Charles H. Christie both understood that Marguerite S. Anderson and the petitioner owned equal interests in their investment." [Tr. 35.]

"Near the end of 1926 the petitioner inquired if his wife's share of the earnings from the 'Young's Building' were being credited to her and, being informed that they were not, had the auditor open an account entitled 'Joint M. S. Anderson' in which was set up the Young's Building at a valuation of $202,788. Also, at about that time another account was opened as of January 1, 1926 (should be January 1, 1925—see Exhibit No. 42), entitled 'Janss Inv. Co. Joint M. S. Anderson'. Also, at about that time, another account was set up for 'Marguerite S. Anderson'." [Tr. 35.]

"The petitioner informed the auditor in 1920 that one-half of the profits from the hotel belong to his wife separately * * *." [Tr. 37.]

From the above express findings it is clear that the Board thought, and so held, that there was a definite agreement (or agreements) between petitioner and his wife that she should have an equal half interest in the various properties as her separate property. The real basis for the Board's adverse decision is shown in the concluding paragraphs of the opinion, as follows:

"Aside from the *presumption of law* which, as we have said, operates in favor of the respondent's contention that the income in question was community income, the very nature of the question here calls for the *strictest proof* on the petitioner's part. Where, as in the instant case, the written records and the acts of the husband and wife for a number of years indicate that, either ill-advisedly or without knowing the result upon their tax liability, they have submitted to the community property law of their state, they should not be permitted to avoid the legal conse-

> quences of that rule *merely upon their own testimony* that they had previously entered into an *oral agreement between themselves* by which their property rights must be determined upon some other than the community property basis. We cannot escape the conviction that this is the *tenor of the cases* in which the courts have considered this question.
>
> "Upon the evidence before us, we are not convinced of the existence of any *valid enforceable* agreement between the petitioner and his wife, prior to the written agreement executed on June 8, 1932, that their income and property should be owned by them otherwise than 'on an equal footing' as in Blair v. Roth, *supra.* We are therefore of the opinion that the petitioner has not overcome the presumption of the correctness of the respondent's determination that the income in question for the years 1924 and 1925 was community income taxable to the petitioner." [Tr. 46-47.] (Italics ours.)

From the above it seems clear that the Board recognized the existence of an oral agreement, but felt that it was legally unenforceable and could not prevail as against the presumption in favor of community property. The Board's decision was based upon the following clear errors of law:

> (1) The presumption as to community property was not evidence and had no probative force. (See pp. 38-42 of opening brief.)
>
> (2) An oral agreement between a husband and wife is sufficient in California to transmute into separate property what would otherwise be community property. (See pp. 22-38 of opening brief.)

(3) The "tenor of the cases" cited by the Board did not require its decision in this case. (See pp. 43-47 of opening brief.)

Furthermore, the Board erred in assuming, contrary to its own express findings, that the petitioner and his wife were relying "merely upon their own testimony that they had previously entered into an oral agreement". While such testimony would be sufficient under California law to establish a separate property status (see pp. 26-33 of opening brief), the record clearly discloses a vast volume of corroborative testimony of disinterested witnesses as well as documentary evidence, such as the following:

1. The testimony of Dr. Edwin Janss, manager of the real estate syndicates. [Tr. 69-77.]

2. The testimony of Charles H. Christie, another member of the syndicates. [Tr. 82-83.]

3. The testimony of M. R. Moulthrop, Esq., attorney for petitioner and his mother. [Tr. 85-88.]

4. The testimony of J. H. Slattery, father of petitioner's wife. [Tr. 107-108.]

5. The testimony of E. P. Adams, certified public accountant. [Tr. 115-118.]

6. The letter from petitioner to his wife, dated September 5, 1923. [Pet. Exh. Nos. 18 and 26.]

7. Numerous deeds, notes, mortgages and other documents executed by Mrs. Anderson. [Pet. Exh. Nos. 12-16, 19-20, 27-39.]

8. The deed to 37 acres of the syndicate property, from Janss Investment Co. to "Stanley S. Anderson

and Marguerite S. Anderson", executed August 16, 1926, and duly recorded. [Pet. Exh. No. 16.]

9. The various entries and accounts in the records of petitioner. [Pet. Exh. Nos. 41, 42, 43.]

10. The separate returns filed for the taxable years in question. [Tr. 38.]

11. The separate accounts set up on the new books of the Janss Investment Corporation, on January 1, 1929. [Tr. 34.]

12. The agreement dated June 8, 1932. [Tr. 36-37.]

Clearly, petitioner's case did not rest "merely upon" the testimony of himself and his wife that they had an oral agreement. It is supported without contradiction by the testimony of five disinterested witnesses as well as considerable documentary evidence. The Board clearly erred in ignoring this evidence, as set forth in its own findings of facts.

2. Findings of Fact by the Board.

It is the duty of the Board to make "all reasonably requisite findings of fact". (*Brampton Woolen Co. v. Commissioner,* 45 F. (2d) 327.) It is essential that findings of fact shall be clear, intelligible, definite, certain and unequivocal. They shall not be vague or evasive. (64 *C. J.,* 1247, 1248.)

Consideration of the Board's "findings of fact" alone would lead clearly to the conclusion that there was a

definite separate property agreement between petitioner and his wife. Respondent seeks to support the contradictory decision of the Board by alleged additional findings in the opinion. Careful study of the opinion discloses that there are no additional clear or definite findings of *facts* to be found there, but merely conclusions of law or mixed statements of law and fact. Surely such ambiguous and indefinite conclusions cannot outweigh the clear and express facts set forth in the formal findings.

A finding of fact designed to negative an affirmative allegation of the petition, which is equivocal or evasive, is equivalent to a negative pregnant in pleading and serves as an admission of the fact alleged.

> "A finding in the form of a negative pregnant, attempting to negative an affirmative allegation, implies the truth of the allegation."
>
> *Wiles v. Hammer*, 66 Cal. App. 538, 540.

To the same effect see:

Tormey v. Anderson-Cottonwood Irrigation District, 53 Cal. App. 559, 562;

Auerbach v. Healy, 174 Cal. 60, 65;

Southern Pacific R. R. Co. v. Dufour, 95 Cal. 615, 618-619;

State v. Box (Texas), 78 S. W. 982, 984;

Bartholomew v. Fayette Irr. Co. (Utah), 86 P. 481, 483.

For example, the finding in the Board's opinion (if it can be deemed a finding), that "We are not convinced

of the existence of any *valid enforceable* agreement between the petitioner and his wife * * *" [Tr. 47], if considered by itself alone, would amount to nothing more than a negative pregnant admitting the existence of the agreement but denying that it was valid or enforceable. This, of course, is merely a conclusion of law that a parol agreement between husband and wife is ineffective to transmute their community property into separate property. This is conclusively confirmed when we refer to the Board's formal findings and note that the Board there expressly found that the agreements were made as contended by petitioner. (See pp. 2-3, above.)

There is no escape from the conclusion that the Board found all of the *facts* in favor of petitioner's contentions. It decided against the petitioner solely upon the basis of a *conclusion of law,* to-wit, that a parol agreement between husband and wife, unaccompanied by the execution and delivery of instruments of conveyance, is ineffective to transmute their community property into separate property. This conclusion of law is utterly erroneous, as is demonstrated by the California authorities cited in our opening brief.

In this connection it should be noted that three members of the Board joined in a dissenting opinion on the ground that there was an effective contract between petitioner and his wife "under which each acquired and held, as tenants in common, a separate one-half interest in these properties and, consequently, the income therefrom should be taxed, one-half separately to each." [Tr. 48.]

3. Beverly Hills Lots.

Petitioner pointed out in his opening brief (pp. 48-49) that of the purchase price of these lots, to-wit, $13,200.00, the sum of $3,200.00 was paid from what was admittedly Mrs. Anderson's separate property, being derived by gift from her father. This being so, she was during the years in question the owner of at least 32/132 of this property in the absence of an effective agreement to the contrary. Counsel for respondent deny this (pp. 20-21), asserting that if the improvements on these lots were made from community funds, the wife's fractional interest therein would be decreased in proportion to the amount of community funds expended in the improvements. Counsel cite no authority in support of their assertion, nor do they attempt to distinguish the California cases to the contrary which were cited in our opening brief (p. 49).

Their unsupported assertion is directly contrary to the settled law in California, which governs this case, that where improvements are made with community funds upon real property which is the separate property of one of the spouses, the title to the improvements remains with the title to the land in the absence of an agreement to the contrary.

For example, in *Dunn v. Mullan,* 211 Cal. 583, 589 (1931), the wife was the owner of an undivided one-half interest in certain unimproved real property as her separate property, the other one-half interest therein being owned by the husband as community property. Extensive

improvements were made thereon out of community funds and the court held squarely that the wife continued to be the owner, as her separate property, of a one-half interest in both the land and the improvements. The court said:

> "This is necessarily so for it is the general rule that improvements made during marriage on the separate property of either husband or wife, although with community funds, belong to the spouse owning the separate property."

So, likewise, in *Smith v. Smith,* 47 Cal. App. 650,653-4, the court held that

> "The expenditures by a husband of either his separate funds or the common funds of himself and wife in improving his wife's separate property does not operate to change the title."

Among the other California decisions to the same effect are the following:

Potter v. Smith, 48 Cal. App. 162, 166;
Estate of Barreiro, 86 Cal. App. 764, 766;
Provost v. Provost, 102 Cal. App. 775, 779;
Spreng v. Spreng, 119 Cal. App. 155, 159;
Peck v. Brummagim, 31 Cal. 440, 448-9;
Seligman v. Seligman, 85 Cal. App. 683, 688-9.

It follows inevitably that the Board's decision herein is erroneous under any and every tenable theory of the law. Of course, we are not contending that petitioner's wife is the owner of merely 32/132nds of the Beverly Hills property. Our contention is that she was the owner

of an undivided one-half thereof as her separate property. The Board expressly found that it was agreed between her and her husband that the real estate commission of $10,000.00, which went into the purchase of this property, "should belong one-half to each" [Tr. 31]. This being so, it necessarily follows that she contributed $8,200.00 of the $13,200.00 purchase price of these lots. Therefore, in the absence of an agreement to the contrary, she would now be the owner of 82/132nds of that property, together with all improvements thereon and the income therefrom. The fact is, however, that she is the owner of an undivided one-half interest therein as her separate property and petitioner is the owner of the other one-half interest therein. The spouses agreed to this, and their agreement to this effect is proved by the uncontradicted testimony herein. [Tr. 91, 92, 108, 109.]

4. Earnings From Services as Distinguished From Income From Properties.

On page 19 of their brief, counsel make the following statements:

> "Petitioner concedes for the purpose of this appeal that the earnings of petitioner and his wife in prior years were properly taxable to the husband as community income for the taxable years in which received. In this there appears to be an inconsistency in view of the statements that agreements existed creating separate properties in the income earned by each. * * *"

The legal situation, under the present authorities is as follows:

(1) In *Lucas v. Earl,* 281 U. S. 111, the Supreme Court held that an antecedent agreement was ineffective to prevent the taxation to the husband of fees and salaries earned by him, though recognizing that immediately thereafter the funds would be vested, under the agreement, with the status of joint or separate property. This decision has been followed consistently by this court in such cases as *Blair v. Roth,* 22 F. (2d) 932; *Belcher v. Lucas,* 39 F. (2d) 74, and *Pedder v. Commissioner,* 60 F. (2d) 866.

(2) However, the Board of Tax Appeals has held to be effective antecedent agreements that the earnings of a particular spouse shall be his or her separate property and taxable accordingly, instead of being taxed as community property. Thus, in *Howard C. Hickman,* 27 B. T. A. 807 (now pending before this Court), the Board held that under an agreement that the compensation received by a California wife for her personal services should be her separate income and separate property, such compensation may not be treated as community income and taxed to the husband. Likewise, in *Helen E. Grant,* January 16, 1934, the Board held that where a husband and wife domiciled in California enter into a valid agreement that the earnings and salary of the husband after the date thereof shall be the separate income and property of the husband, no part of such earnings and salary is taxable to the wife.

In the present case the earnings of petitioner and his wife were received on account of their joint services and

it was agreed in advance that one-half of such compensation should be the separate property of each of them. Under the above decisions of the Board, it would be arguable that such income was taxable one-half to each of them, provided that they had elected to file separate returns.

However, the compensation for their services was received during taxable years prior to those here in question and, due to the advice of the auditor who prepared their returns [Tr. 117-118], joint returns were filed. For the years 1924 and 1925, here in question, there is no issue as to income from personal services. Accordingly, nothing would be gained by an argument that the *earnings,* as distinguished from the investments of said earnings, were the separate property in equal proportions.

As shown by the findings [Tr. 32] these earnings were deposited in a joint bank account for petitioner and his wife and the investments in question were made with withdrawals from said account. Irrespective of the taxable status of the earnings, as such, the funds in the bank account and the investments therefrom had, under the express agreement of the parties, the status of separate property, owned equally by them as tenants in common.

Accordingly, in order to avoid confusion and to reduce the issues to a minimum, counsel for petitioner have conceded, for purposes of this appeal, that the earnings from personal services were taxable entirely to the hus-

band, under the principle laid down in *Lucas v. Earl*, 281 U. S. 111.

Obviously, there is no inconsistency involved in this concession, but merely an effort to protect the court from the consideration of unnecessary and irrelevant issues.

Respectfully submitted,

LOUIS W. MYERS,
JOSEPH D. PEELER,
WARD LOVELESS,
Solicitors for Petitioner

No. 7323

United States
Circuit Court of Appeals

For the Ninth Circuit

5

BERNHARD DAVIDOW,

Appellant,

vs.

LACHMAN BRO'S INVESTMENT CO., a corporation; G. P. ANDERSON; TITLE INSURANCE & GUARANTY CO., a corporation; CORPORATION OF AMERICA, a corporation; BANK OF AMERICA OF CALIFORNIA, a corporation; BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION, a corporation,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States for The Northern District of California, Southern Division
Honorable, Frank H. Kerrigan, Judge.

FILED
NOV 9 - 1933
PAUL P. O'BRIEN,
CLERK

ROSICRUCIAN PRESS, LTD., SAN JOSE, CALIF.

No.

United States
Circuit Court of Appeals

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BERNHARD DAVIDOW,

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(Clerk's Note: When deemed likely to be of an important nature errors or doubtful matters appearing in the original record are printed literally in italic: and, likewise, cancelled matter appearing in the original record is printed herein accordingly. When possible, an omission from the text is indicated by printing in the two words betweeen which the omission seems to occur.)

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(Title of Court and Cause) No. 3,572-K

CITATION ON APPEAL

UNITED STATES OF AMERICA, ss
THE PRESIDENT OF THE UNITED STATES,

To:—LACHMAN BRO'S. INVESTMENT CO., a corporation; G. P. ANDERSON; TITLE INSURANCE & GUARANTY CO., a corporation; CORPORATION OF AMERICA, a corporation; BANK OF AMERICA OF CALIFORNIA, a corporation; BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION, a corporation, Greeting:—

You, and each of you, are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California, within Thirty (30) days from the date of this Citation, pursuant to an order allowing an appeal from the District Court of the United States for the Northern District of California, Southern Division, in a suit wherein Bernhard Davidow is appellant and you are appellees, to show cause, if any there be, why the decree rendered against said Bernhard Davidow should not be corrected, and why speedy justice should not be done to the parties on that behalf.

Dated at San Francisco, State of California, this Sept. 28, 1933.

Frank H. Kerrigan,
Judge of the U. S. District Court for the Northern District of California, Southern Division.

(Endorsements): Service of the foregoing Citation is hereby acknowledged at San Francisco, California, this September 28th, 1933.

Joseph E. Bien
Werner Olds
Attys for Defts. Lachman Bro's Inv. Co; G.P. Anderson; Title Ins & G. Co.
Louis Ferrari
Tobias J. Bricca
W. E. Johnson
Attys for Defts. Corp. of Am.; Bk. of Am. of Cal; Bk. of Am. Nat. Tr. & Sav. Assn.

Filed Oct. 3, 1933.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

BERNHARD DAVIDOW,
Plaintiff,
vs.
LACHMAN BRO'S. INVESTMENT CO,. a corporation; G. P. ANDERSON; TITLE INSURANCE AND GUARANTY CO., a corporation; CORPORATION OF AMERICA, a corporation; BANK OF AMERICA OF CALIFORNIA, a corporation; M. D. FRANK; BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION, a corporation; JOHN DOE; RICHARD ROE; and JAMES MOE, whose true names are to the plaintiff unknown.
Defendants.

In Equity
No. 3,572-K

COMPLAINT

This action is instituted by plaintiff against the above named defendants to determine conflicting rights in and to certain real properties situated within said Northern District of California and to quiet his title to such lands; plaintiff contends that the defendants have endeavored to deprive him of his rights in and to said properties without due process of law, contrary to the express provisions of the Constitution of the United States, such wrongs are based principally upon fraud and deceit practiced by the defendant LACHMAN BRO'S. INVESTMENT CO., aided by the other defendants named herein, all of which as fully appears from the facts alleged in the following bill. The plaintiff and all of said defendants are citizens of the United States and residents of the Northern District of California.

TO THE HONORABLE JUDGES OF THE ABOVE ENTITLED COURT:

Comes now BERNHARD DAVIDOW, the above named plaintiff, a citizen of the United States, residing therein within the Northern District of California, and files herein this his bill of complaint against the above named defendants, and complains and respectfully represents and alleges as follows:

I.

That at all the times herein mentioned the defendant, LACHMAN BRO'S INVESTMENT CO., was and that it now is a corporation organized and existing under and by virtue of the laws of the State of California, having its principal office and place of business in said State at the City of San Francisco.

II.

That at all the times herein mentioned the defendant TITLE INSURANCE AND GUARANTY CO. was and

that it now is a corporation organized and existing under and by virtue of the laws of the State of California, having its principal office and place of business in said State at the City of San Francisco.

III.

That at all the times herein mentioned the defendant CORPORATION OF AMERICA was and that it now is a corporation organized and existing under and by virtue of the laws of the State of California, having its principal office and place of business in said State at the City of San Francisco.

IV.

That at all the times herein mentioned the defendant BANK OF AMERICA OF CALIFORNIA was and that it now is a corporation organized and existing under and by virtue of the laws of the State of California, having its princpal office and place of business in said State at the City of San Francisco.

V.

That at all the times herein mentioned the defendant BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION was and that it now is a corporation organized and existing under and by virtue of the national banking laws of the United States, having its principal office and place of business at the City of San Francisco, State of California.

VI.

That at all the times herein mentioned the plaintiff was and that he now is the owner in fee simple absolute and entitled to the peaceable possession and enjoyment, except as herinafter expressly admitted, of all those certain real

properties lying and being situate in the City and County of San Francisco, State of California, and the County of Napa, said State; that is to say, that certain piece or lot of land within said City and County of San Francisco particularly bounded and described as follows, to-wit:

COMMENCING at a point of intersection of the northerly line of Haight Street and the easterly line of Gough Street; running thence easterly and along said line of Haight Street fifty-five (55) feet; thence at a right angle northerly one hunderd twenty (120) feet to the southerly line of Rose Street; thence at a right angle westerly and along said line of Rose Street fifty-five (55) feet to the easterly line of Gough Street; thence at a right angle southerly along said line of Gough Street one hundred twenty (120) feet to the point of commencement

BEING part of Western Addition Block No. 143.

Also those certain other tracts, pieces and parcels of land situated in said County of Napa and particularly described as follows, to-wit:

COMMENCING at a point on the western boundary line of Carne Humana Rancho, distant thereon 29.19 chains northerly from corner C.H. No. 8 of said Rancho; and running thence due north along said western boundary line of said Rancho 24.40 chains to a stone monument, which is one of the corners of the western boundary of the Town of St. Helena; thence following the boundary line of said Town of St. Helena south 84½ degrees east 3.11 chains, north 55 degrees east 86 links, south 83 degrees east 2.80 chains, south 72¼ degrees east 3.30 chains, and north 89¾ degrees east 1.60 chains to a large white oak marked "C"; thence south 27 degrees west 26 chains to the point of commencement. Containing 13.85 acres of land, more or less.

Also all that certain other real property situate, lying and

being in the County of Napa, State of California, bounded and described as follows, to-wit:

COMMENCING at a point formed by the intersection of the western boundary line of the Carne Humana Rancho with the southern line of Hudson or York Creek; and running thence southerly along said boundary line to a stone monument which is one of the corners of the western boundary of the Town of St. Helena, said point being also the northwestern corner of the tract of land heretofore conveyed by Samuel A. Crosby and wife to John York by deed of record in Volume N of Deeds, page 205; thence following said boundary line of said Town of St. Helena south 84½ degrees east 3.11 chains, north 55 degrees east 86 links, south 83 degrees east 2.80 chains, south 72¼ degrees east 3.30 chains, and north 89¾ degrees east 1.60 chains to a large white oak marked "C"; thence south 81½ degrees east 5.31 chains to a point from which a black oak tree marked Y bears northeasterly 19 yards; thence north 1¾ degrees west 9.28 chains to the southwest corner of John York's orchard; thence north 35¾ degrees east, following the northewestern line of said York's orchard, to the southern line of Hudson or York Creek, and thence in a general westerly direction, following the meanders of the southern line of said Creek, to the point of commencement. ALSO,

The entire south half and the southeast quarter of the northeast quarter of Section Number 34; the southwest quarter, the west half of the southeast quarter, the southwest quarter of the northwest quarter, the east half of the northwest quarter and the west half of the northeast quarter of Section Number 35, all in Township No. 8 north, Range 6 west, M.D.M.

Containing 800 acres of land, more or less, excepting therefrom, however, all that portion of the northwest quarter of the northeast quarter of Section Number 35 which lies northeast of the center line of Hudson or York Creek, and also excepting from said portion of said Sec-

tion Number 35, that certain portion thereof lying between said Hudson Creek and the County Road. ALSO,

That certain other parcel of land lying partly within the corporate limits of the Town of St. Helena, in said County and State, and bounded and described as follows, to-wit:

COMMENCING at a stake on the line of the County Road distant in a southerly direction 150 feet from the middle of the ravine passing thru the St. Helena Water Company's reservoir; thence running on the line of said water company's lands as follows:—north 87 degrees west 2.29 chains, north 75 degrees west 3.46 chains, north 61 degrees west 1.66 chains, and north 5½ degrees east 1.88 chains to a stake about 3 feet from said water company's flume; thence along, near the line of said flume, south 75½ degrees west 3.74 chains, north 72 degrees west 3.03 chains and north 64¾ degrees west 1.68 chains; thence leaving the line of said flume and running south 37 degrees west 1.02 chains to the line of the County Road; thence along the line of the County Road south 45 degrees east 2.01 chains and south 80½ degrees east 1.90 chains to a stake near the corner of the bridge across York Creek; thence along the northerly bank of said Creek south 83 degrees east 2.06 chains and south 50 degrees east 4.84 chains to a stake on the line of the County Road; thence along the line of said County Road south 75 degrees east 3.32 chains, north 67½ degrees east 1.07 chains, and north 49½ degrees east 3.12 chains to the point of commencement.

Containing 3.45 acres of land, more or less.

All of the above described premises in said County of Napa, containing in the aggregate 822.80 acres of land, more or less.

VII.

That upon to-wit: June 17th, 1930, the plaintiff executed

and delivered his Deed of Trust to all of said lands and premises described in Paragraph VI. herein to the defendant, CORPORATION OF AMERICA, as Trustee, the defendant BANK OF AMERICA OF CALIFORNIA being named therein as the Beneficiary, a full, true and correct copy of which said Deed of Trust is hereto attached, marked "Exhibit A" and is hereby referred to and made a part hereof; that the said Deed of Trust was filed for record in the office of the Recorder of said City and County of San Franscico on the 18th day of July, 1930, and recorded in Volume 2066 of Official Records at page 257, which said Deed of Trust has never been foreclosed, but ever since said 17th day of June 1930 has been and now is the valid and subsisting Deed of Trust of Plaintiff, except as hereinafter qualified. That said instrument was also recorded in the Recorder's Office of said Napa County in Volume 52 of Official Records at page 183.

VIII.

That upon to-wit; July 15th, 1930, plaintiff made and delivered a certain instrument purporting to be another Deed of Trust wherein the said real premises herein and in Paragraph VI. hereof are particularly set forth and described and in which the defendant TITLE INSURANCE AND GUARANTY CO: is named as Trustee and the defendant G. P. ANDERSON is named as Beneficiary, which said instrument is hereto attached, marked "Exhibit B" and is hereby referred to and made a part hereof. That said instrument was filed for record in the office of the Recorder of said City and County of San Francisco, on the 18th day of July, 1930 and recorded in Volume 2060 of Official Records at page 458; and, upon the same day the said instrument was also recorded in the Recorder's Office of Napa County, California.

That said purported Deed of Trust was given only for the security of the promissory note of plaintiff to the defendant G. P. ANDERSON in the sum of $25,000.00, of even date with said purported Deed of Trust, payable six months after date, with interest at 12% per annum.

That the said G. P. ANDERSON at the time of the execution and delivery of said promissory note and purported Deed of Trust was the office woman for Jack Rittigstein, who at all of said times was the vice-president and acting secretary for the defendant LACHMAN BRO'S INVESTMENT CO., which said defendant was the real third party under said purported Deed of Trust; that the said defendant G. P. ANDERSON was a mere dummy and had no financial interest whatsoever in said transaction; that the defendant LACHMAN BRO'S. INVESTMENT CO. used said defendant G. P. ANDERSON'S name in said transaction for the sole purpose and intent at all of said times to fraudulently cheat and defraud this plaintiff out of his said properties by concealing its own name and for no other purpose; that at all of said times neither said defendant G. P. ANDERSON nor the said Jack Rittigstein would disclose the name of the real party in interest in said transaction and that it was a long time after the attempted foreclosure of said purported Deed of Trust that plaintiff ascertained the true fact that said defendant LACHMAN BRO'S. INVESTMENT CO. was the real party in interest in said transaction; that in said transaction the said Jack Rittigstein acted as the principal in negotiating said loan; that the 12% per annum rate of interest upon said loan added to the commission charged by said Jack Rittigstein for negotiating the same, being usurious under the laws of the State of California, this plaintiff did institute

an injunction suit against the said Jack Rittigstein as defendant, which said action was instituted in the Superior Court of the State of California in and for the City and County of San Francisco, which said action was instituted for the purpose of enjoining and restraining the nominal defendant G. P. ANDERSON from foreclosing said purported Deed of Trust; that prior to the dismissal of said action it was agreed, stipulated and understood by and between the parties thereto that in the event plaintiff in said action would stipulate to dismis the same, that the defendant would agree to a continuance of said foreclosure proceeding and renew said loan; but that in the event said defendant was forced by the defendant BANK OF AMERICA OF CALIFORNIA to foreclose its purported Deed of Trust and said foreclosure was consummated, to reinstate the plaintiff as the owner of said property and renew the said loan to this plaintiff; that after said stipulation was entered into, said defendants refused to renew the said loan and proceeded to foreclose their purported Deed of Trust, as hereinafter alleged; that at all of said times plaintiff was ignorant of the fact that the defendant LACHMAN BRO'S. INVESTMENT CO. was the real party in interest in said transaction and that all of his dealings therein were had and done with the said Jack Rittigstein as principal and the attorney for said Jack Rittigstein; that during said foreclosure proceedings, Gustave Lachman, one of the officers of said LACHMAN BRO'S. INVESTMENT CO. denied that he or his said Company was interested in said loan; that the representations of said defendants and their said counsel were wholly false in this; that after the dismissal of said action upon said stipulation, the said defendants proceeded to foreclose the said purported Deed of Trust and

after the consummation of such proceeding, refused to reinstate the plaintiff as the owner of said property or to renew the said loan as hereinabove set forth.

That for the further purpose of showing the fraudulent intent of the defendant LACHMAN BRO'S. INVESTMENT CO., the agents for said defendant in the foreclosure of said purported Deed of Trust at the sale of the properties therein set forth and described bid in the San Francisco property for the paltry sum of $15,000.00, and the properties located in the County of Napa for the sum of $5,000.00, leaving a deficiency pending upon which the defendant LACHMAN BRO'S. INVESTMENT CO. could later bring suit and recover a deficiency judgment against this plaintiff in the approximate sum of $6,500.00.

And this plaintiff further represents and shows that such fraudulent intent on the part of the defendant LACHMAN BRO'S. INVESTMENT CO. is further shown, as hereinafter more specifically set forth and alleged, in that said defendant paid the further sum of $25,000.00 to the defendant BANK OF AMERICA of CALIFORNIA upon the hereinbefore mentioned indebtedness of this plaintiff to said defendant Bank for and in consideration of the release by said Bank of the properties of the plaintiff located in Napa County, thereby ostensibly securing in itself the said Napa County properties free and clear of all encumbrances for the paltry sum of $30,000.00.

That plaintiff further represents and shows that said Napa County properties, at all of said times, and prior to the time plaintiff acquired title to the same, composed the country estate of a retired capitalist; that the improvements upon said properties consisted of a fifteen room mansion, the foundation

and first story being built of stone and the two upper stories of brick and stucco, which at the time of the consummation of the loan herein referred to, could not have been replaced for less than the sum of $100,000.00; that another improvement upon the said premises consisted of a winery, which was a tunnel bored into a hill, which had cost the sum of $40,000.00; out buildings consisting of two houses for the hired help and three barns; fences, a 40,000 gallon stone masonary resevoir for impounding spring waters for domestic and irrigation purposes, together with the piping installed for such purposes; all of the estimated value of $10,000.00; the 822 acres of land, both improved and wild, 95 acres of which are in wine grapes, 65 acres in olives; and a family orchard, all of the reasonable worth and value of $50,000.00, making the present value of said estate of the estimated value of $200,000.00.

That the fraudulent intent and design of the defendant LACHMAN BRO'S. INVESTMENT CO. is further shown and disclosed by the fact that at the time of the consummation of said loan, the premises covered by said purported Deed of Trust and located in the City and County of San Francisco, was of the estimated value of $300,000.00; that said premises had a potential value in a sum far greater by reason of the fact of its advantageous location within the business district of San Francisco, being situated on the corners of Market, Gough and Haight Streets, and opposite the intersection of Market and Valencia Streets; that said property had a lease income at the time of said loan in the sum of $1,380.00 per month.

IX.

That said fraudulent intent is further disclosed in that the said defendant LACHMAN BRO'S. INVESTMENT CO.,

acting through its said agent Jack Rittigstein, forced plaintiff to borrow and pay to the defendant BANK OF AMERICA OF CALIFORNIA on its said first Deed of Trust the sum of approximately $6,000.00, promising to renew the said $25,000.00 loan if said sum was so paid; but that after plaintiff paid said sum, said defendant refused to renew the said loan as agreed; that at all of said times the said LACHMAN BRO'S. INVESTMENT CO. and its said broker well knew that the condition of the money market was such that plaintiff could not re-finance said $25,000.00 second loan elsewhere.

X.

That in furtherance of said fraudulent intent and purpose to cheat and defraud this plaintiff of his said properties, and acting through the defendant the said G. P. ANDERSON, said defendant LACHMAN BRO'S. INVESTMENT CO. on February 20th, 1931, although but seven months on said loan had elapsed, at the request of their attorney in said proceeding, caused to be filed in the Recorder's Office of the City and County of San Francisco, State of California, an instrument dated February 20th, 1931, signed by the defendant G. P. ANDERSON, in which said defendant purports to give notice of the breach of payment of plaintiff's said promissory note dated July 15th, 1930, and notice of her election to sell the said land of the plaintiff in said proported Deed of Trust, "Exhibit B", hereto attached, under the terms and provisions of Section 2924 of the Civil Code of California, and the said purported Deed of Trust, which said instrument was recorded in Volume 2164 of Official Records of said City and County at page 203, to which said record reference is made for a full and complete copy thereof; that

said notice of breach was also filed for record in the Recorder's Office of said Napa County.

XI.

That plaintiff is informed and believes and upon such information and belief alleges that, pursuant to instructions given to it by the defendant LACHMAN BRO'S. INVESTMENT CO., acting through the defendant G. P. ANDERSON, the defendant TITLE INSURANCE AND GUARANTY CO. as Trustee under said purported Deed of Trust, "Exhibit B", proceeded to give notices of sale of the said premises hereinabove and in Paragraph VI. hereof fully set forth and described, by publication and posting of notices of of such sales under and in accordance with the provisions of said Section 2924 of the Civil Code, said Code section having reference to sales of property under Deeds of Trust, which said notices provided, among other things, that said TITLE INSURANCE AND GUARANTY CO. would, at certain places and on certain days and dates therein specified, proceed to sale and sell the said premises to the highest bidder or bidders therefor for cash, all of which said proceedings were had and done pursuant to said Section 2924 of the Civil Code of California; that no other notice of such pretended sale was given by said defendant; that under and in accordance with said notice of sale, said defendant TITLE INSURANCE AND GUARANTY CO., Trustee, at the times and places in said notices specified, offered the said premises for sale; the same being sticken off to the said defendant G. P. ANDERSON and thereafter and in accordance with such proceedings, the said TITLE INSURANCE AND GUARANTY CO., as Trustee, made, executed, and delivered to the defendant G. P. ANDERSON its purported Deed of

Conveyance to the said premises under date of February 1st, 1932, which said instrument is hereto attached, marked "Exhibit C", and is hereby referred to and made a part hereof; that said instrument was, at the request of E. G. SCHWARZMANN, filed for record in the office of the Recorder of the City and County of San Francisco, State of California, on February 4th, 1932, and recorded in Volume 2320 of Official Records, at page 301; that said instrument was also recorded in the Office of the Recorder of said Napa County, State of California.

That the said Notices of Sale aforesaid were published and posted in both of said Counties; that only the realty situate in the County where the Notice was published and posted was described in such Notice, and no Notice of the sale of the property in the other County was given or mentioned therein; that neither of said Notices mentioned or referred to the prior deed of trust outstanding on said properties at that time.

That said fraudulent intent of defendant LACHMAN BRO'S. INVESTMENT CO. is further shown in that the said Napa County properties were neither offered for sale nor sold in separate parcels, although capable of such subdivision, as by law in such cases provided.

XII.

That upon the 15th day of July, 1932, at the request of the defendant LACHMAN BRO'S. INVESTMENT CO., and in furtherance of its said fraudulent purpose and intent to acquire the said properties of this plaintiff, there was filed for record in the office of the Recoreder of the City and County of San Francisco, State of California, an instrument in writing purporting to be a Deed wherein the defendant

G. P. ANDERSON (a single woman) purports to convey the lands and premises herein and in Paragraph VI hereof expressely set forth and described, to the defendant LACHMAN BRO'S. INVESTMENT CO., which said instrument was recorded in Volume 2394 of Official Records at Page 181, to which said record reference is hereby made for a full, true and correct copy of the same; that said purported Deed was also recorded in said Napa County.

XIII.

That at the time of the execution of said instrument by the plaintiff, BERNHARD DAVIDOW, to the defendant TITLE INSURANCE AND GUARANTY CO., Trustee, "Exhibit B" hereto attached, the said plaintiff had no legal title to said premises, except to the right of possession and the right to the issues therof having theretofore conveyed the same under said Deed of Trust marked "Exhibit A" attached to this complaint, and for said reason the said defendant TITLE INSURANCE AND GUARANTY CO., Trustee, acquired no right, title, estate or interest *in presenti* of any kind or nature, either legal or equitable, in or to the said premises therein described and for said reason all proceedings had and done subsequent to, under, and/or in reliance on the purported Deed of Trust, "Exhibit B", hereinbefore referred to, conveyed and transferred to neither said defendant TITLE INSURANCE AND GUARANTY CO., Trustee, nor to said defendant G. P. ANDERSON, any interest of any nature in or to said properties or any part or portion thereof, but that all proceedings had and done under and in accordance with any of the terms or provisions contained in said instrument "Exhibit B" hereto attached, were and are utterly void and without any legal effect of any kind, and for the same

reason and upon the same grounds, the defendant LACHMAN BRO'S. INVESTMENT CO. acquired no right, title, estate or interest of any kind or nature in and/or to said lands and premises from the defendant G. P. ANDERSON by the instrument hereinabove set forth as "Exhibit C".

That by reason of the aforesaid attempted foreclosure proceedings under said Section 2924 of the California Civil Code, as aforesaid, the said Notices of Sale were insufficient and that by reason thereof plaintiff's said property was sought to be taken and has been taken without due process of law which said proceeding was and is in direct conflict with the express terms of Section 1, of Amendatory Article XIV of the Federal Consititution.

XIV.

Plaintiff further alleges and shows that said Section 2924 of the Civil Code of California, both in its present condition and prior to its amendment in 1931, was and is unconstitutional, illegal and void; that said Statue is not in truth and/or in fact law, and therefore, cannot be made the basis or authority for any of the acts and/or doings and/or claims of the defendants, or any of them, in the premises; that said pretended law is unconstitutional and void, because:—

(a) Its enactment was beyond the powers vested in the Legislature of the State of California in that it contemplates and provides a method of procedure by which legal rights may be asserted, and legal obligations enforced by the taking of title to property, from the owner thereof, without any notice and fair opportunity to be heard in his defense in a judicial action or at all and thereby deprives the owner of

property of rights therein and thereto without due process of law and in that it thereby violates the inhibition of that portion of the Fourteenth Amendment to the Consitution of the United States hereinabove quoted;

(b) The aforesaid acts of defendants under said Section 2924 of the Civil Code of the State of California, if permitted, suffered and/or condoned, would deprive plaintiff of his property and rights in and to the same without due process of law, in violation of the provision in the Constitution of the State of California guaranteeing and securing to all persons within its jurisdiction that no person shall be deprived of the title to property without due process of law and in that it thereby violates the said constitutional provision and denies to him the equal protection of the laws in violation of the provisions of a portion of the Fourteenth Amendment to the Constitution of the United States.

(c) The foreclosure of said instrument "Exhibit B" under staid Civil Code Section 2924, if permitted, suffered and/or condoned, would subject plaintiff to the deprivation of his property without due process of law and deny to him equal rights and benefits under the laws and thereby abridge the right, privileges and immunities belonging to plaintiff as a citizen of the United States that he shall not, under color of any law, statute, ordinance, regulation or custom, be deprived of the title or right to possession of property without personal notice and without being afforded a fair opportunity to be heard in its and his defense, and, therefore, it violates the inhibition of the provisions of the portion of the Fourteenth Amendment to the Constitution of the United States above quoted.

XV.

That ever since the first day of February, 1932, said defendant LACHMAN BRO'S. INVESTMENT CO. has taken possession of said properties and collected the rents from said premises situated in the City and County of San Francisco, and has not accounted to the plaintiff therefor; that said rentals ever since said February 1st, 1932, have approximated the sum of $1,380.00 per month. That there is no income from said Napa County properties.

XVI.

That for the purpose of protecting the interests of all the parties hereto *pendente lite* in the said property and the issues of said property, a Receiver should be appointed by this Honorable Court to take charge and collect the rentals and otherwise manage the property situated in the City and County of San Francisco, State of California, and to collect and disburse the income and rentals therefrom under and in accordance with the orders of this Court, as by law in such cases provided.

XVII.

That on or about December 10th, 1932, for a good and sufficient consideration, plaintiff by grant deed conveyed the properties herein in Paragraph VI. expressly described as being situate in the County of Napa, State of California, to M. D. FRANK, which said conveyance was, upon December 14th, 1932, filed for record in the office of the recorder of Napa County, California and recorded in Volume 73 of Official Records at page 157.

XVIII.

That the defendants BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION, JOHN DOE,

RICHARD ROE, and JAMES MOE claim some interest in and to the said real properties herein described, adverse to plaintiff, the nature of which claims are to the plaintiff at this time unknown; that the said defendants be required to answer the complaint of the plaintiff and set up their respective claims; that the real names of said defendants are to the plaintiff unknown.

XIX.

That plaintiff has no plain, speedy or adequate remedy at law for the enforcement or protection of his rights herein set forth.

AND FOR A SECOND CAUSE OF ACTION AGAINST SAID DEFENDANTS, PLAINTIFF FURTHER SAYS AND ALLEGES:

I.

That plaintiff hereby refers to Paragraphs Nos. I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII and XIX of his First Cause of Action herein and incorporates them and each of them herein and as a part of this cause of action as fully and with like effect as though each and all of the allegations in said paragraphs were herein set forth in detail.

II.

That the Deed of Trust executed and delivered by the plaintiff to defendant CORPORATION OF AMERICA as Trustee upon, to-wit, June 17th, 1930, a copy of which said Deed of Trust is hereto attached, marked "Exhibit A" was so executed and delivered as security only for the written promissory note of plaintiff to defendant BANK OF AMERICA OF CALIFORNIA, which said note bore even date

with said Deed of Trust, was in the principal sum of $150,000.00, bearing interest at the rate of 6% per annum, payable one year after date, to the order of said BANK OF AMERICA OF CALIFORNIA, which said promissory note was upon said 17th day of June, 1930 delivered to said BANK OF AMERICA OF CALIFORNIA and ever since that date has been and now is the valid and outstanding obligation of plaintiff to said payee, the defendant BANK OF AMERICA OF CALIFORNIA, except as hereinafter denied.

III.

That on or about July 15th, 1932, the defendant LACHMAN BRO'S. INVESTMENT CO. voluntarily, and without the knowledge or consent of this plaintiff, paid to the defendant BANK OF AMERICA OF CALIFORNIA for and on account of the aforesaid obligation of plaintiff to said defendant BANK OF AMERICA OF CALIFORNIA the sum of $25,000.00, which said sum said BANK OF AMERICA OF CALIFORNIA, without the knowledge or consent of this plaintiff received and accepted from said defendant LACHMAN BRO'S. INVESTMENT CO. and applied the same upon said written obligation, the aforementioned $150,000.00 promissory note of plaintiff; and thereupon, and without the knowledge or consent of plaintiff, said defendant BANK OF AMERICA OF CALIFORNIA instructed the defendant CORPORATION OF AMERICA, the trustee mentioned in said Deed of Trust, "Exhibit A" hereto attached, to release from the obligation of said Deed of Trust all the real properties therein described as being situate in the Couny of Napa and State of California. That acting upon said instruction from said defendant BANK OF AMERICA OF CALIFORNIA the defendant CORPORA-

TION OF AMERICA, Trustee, did, under date of July 15th, 1932, make, execute and deliver to said defendant LACHMAN BRO'S. INVESTMENT CO. its deed of release of said Napa County premises, which said Deed of Partial Reconveyance was filed for record in the Office of the County Recorder for said Napa County, California, by the defendant LACHMAN BRO'S. INVESTMENT CO. upon July 19th, 1932, and recorded in Volume 69 of Official Records of said County at Page 314, a full, true and correct copy of which said Deed of Partial Reconveyance is hereto attached, marked "Exhibit D" and is hereby referred to and made a part hereof.

IV.

That the premises considered, the said action of the defendant CORPORATION OF AMERICA, Trustee, in releasing said real properties free and clear of the said Deed of Trust, and without the knowledge or consent of the plaintiff BERNHARD DAVIDOW so to do, and thereby releasing the said real properties from the purpose for which they were conveyed, namely, as security for the payment of said promissory note of the plaintiff in the sum of $150,000.00, has thereby deprived this plaintiff of said security without due process of law, contrary to the express provisions of Amendatory Article V, Section I of the Constitution of the United States; and, further, contrary to the express provisions of Article I, Section 13, of the Constitution of the State of California. That by its said wrongful action said defendant CORPORATION OF AMERICA has placed itself in a position where it cannot now fulfill its said trust.

WHEREFORE, plaintiff prays judgment and decree against defendants:

1. That it be decreed that none of said defendants has any right, title, estate or interest of any kind or character, either at law or in equity, in and/or to the real properties as Paragraph VI. herein specifically set forth and described as being situate in the County of Napa, State of California, except the defendant M. D. FRANK.

2. That it be decreed that the payment of the $25,000.00 made by defendant LACHMAN BRO'S. INVESTMENT CO. to the defendant BANK OF AMERICA OF CALIFORNIA for and on account of the promissory note of said plaintiff to said Bank in the sum of $150,000.00 was so made voluntarily and that the same is now irrevocable and was and is a payment upon said promissory note of the plaintiff to said Bank and that the plaintiff is entitled to such credit free and clear of any claim whatsoever by said defendant LACHMAN BRO'S. INVESTMENT CO.

3. That it to be decreed that the defendant CORPORATION OF AMERICA, Trustee, its successors, grantees or assignees, by reason of its breach of contract in making and executing its Deed of Partial Release of the properties covered by said Deed of Trust, "Exhibit A", hereto attached, be forever enjoined and debarred from foreclosing the said Deed of Trust.

4. That it be decreed that the defendant BANK OF AMERICA OF CALIFORNIA, its successors and assigns, by reason of its breach of contract in receiving said sum of $25,000.00 for and on account of the written obligation of plaintiff, without the plaintiff's knowledge and/or consent ,and instructing its Trustee, CORPORATION OF AMERICA, to release said Napa County lands from the Deed of Trust of the plaintiff, be forever enjoined and debarred form en-

forcing the said promissory note against the plaintiff by Court action or otherwise.

5. That the defendants LACHMAN BRO'S. INVESTMENT CO., G. P. ANDERSON, TITLE INSURANCE AND GUARANTY CO., BANK OF AMERICA OF CALIFORNIA and CORPORATION OF AMERICA, and each of said defendants, be decreed to surrender to plaintiff for destruction the several instruments referred to herein, including promissory notes, deeds, deeds of trust, and all subsequent instruments depending thereon, whether in this complaint set forth, described, referred to, or otherwise, and that each and all of said instruments be decreed to be null, void and of no force, effect or virtue whatsoever for any purpose.

6. That it be decreed that plaintiff is the owner in fee of the said premises situate in the City and County of San Francisco, and that his said grantee, M. D. FRANK, is the owner in fee of the said premises located in said Napa County, and that none of said defendants has any right, title, estate or interest in or to either of said properties, or to any part or portion of the same.

7. That a Receiver be appointed herein by this Honorable Court, *pendente lite,* to collect the rents and issues of the property herein and in Paragraph VI. of plaintiff's First Cause of Action expressly described as located in the City and County of San Francisco, State of California, to receive and disburse such rentals under the order and direction of this Court, as by law in such cases provided. That it be ordered and decreed that the defendant LACHMAN BRO'S. INVESTMENT CO. account to this plaintiff for all rents, issues and profits received by it from the said premises from

the first day of February, 1932, to the date of the appointment of such Receiver.

8. That plaintiff be permitted to insert herein the true names of JOHN DOE, RICHARD ROE and JAMES MOE as soon as the same are ascertained.

9. That the plaintiff have and recover such other, further, and additional relief as may to the Court be deemed just and equitable and that he recover his costs and disbursements herein.

Herbert N. DeWolfe
Attorney for Plaintiff.
163 Sutter Street
San Francisco, California.
Telephone: EXbrook 4234.

(Verified by Plaintiff April 29th, 1933 before Notary Public)

"EXHIBIT A"

This Deed of Trust, made, in duplicate, this 17th day of June, A.D. 1930, between BERNHARD DAVIDOW, widower, of the City and County of San Francisco, State of California, as Trustor, and CORPORATION OF AMERICA, a corporation duly organized and existing under and by virtue of the laws of the State of California, as Trustee, and BANK OF AMERICA OF CALIFORNIA, a corporation organized and existing under and by virtue of the laws of the State of California, as Beneficiary;

WITNESSETH: that said Trustor hereby grants, conveys and confirms unto said Trustee, with power of sale, the following described real property, situate in the City and County of San Francisco, State of California ,to-wit:

(Also Napa County property)

(The same as described in Paragraph VI. of the Complaint)

Together with the appurtenances thereto and the rents, issues and profits thereof, and warranting the title to said premises.

TO HAVE AND TO HOLD, the same unto said Trustee and its successors, upon the trusts hereinafter expressed, namely;

FIRST: As security for the payment of..
....dollars in United States gold coin of the present standard of weight, fineness and value, with interest thereon in like gold coin according to the terms of the promissory note or notes for said sum executed and delivered by the Trustor to the Beneficiary and stated to be secured by this Deed of Trust.

SECOND: As security for the payment of such additional sum or sums as may be hereafter loaned by said Beneficiary to, evidenced by the note or notes of, said Trustor, with interest thereon as in said promissory notes provided.

THIRD: As security for the payment of all other moneys that may become due said Trustee and Beneficiary, or either of them, pursuant to this instrument.

FOURTH: During the continuance of these trusts, the Trustor agrees to pay, satisfy and discharge at maturity all taxes, assessments, and all other charges and encumbrances which now are, or shall hereafter be, or appear to be, a lien upon above premises, or any part thereof, and in default thereof the Beneficiary or Trustee may without demand or notice, pay, satisfy or discharge the said taxes, assessments, charges or encumbrances, and pay and expend any sums of money that it may deem necessary therefor, and may remove, litigate or compromise all adverse claims

affecting said premises, and shall be the sole judge of the legality or validity of said taxes, assessments, charges, encumbrances or adverse claims, and the amount necessary to be paid in the satisfaction or *or* discharge thereof; the Trustor also agrees at all times to keep the buildings and improvements which now are or shall hereafter be erected upon the above premises, insured against loss or damage by fire and such other casualties as may be designated by said Beneficiary in an amount required by said Beneficiary by some insurance company or companies to be approved by said Beneficiary, the policies of which insurance shall be made payable, in case of loss, to said Beneficiary and shall be delivered to and held by it as further security; and in default thereof said Beneficiary may procure such insurance, not exceeding the value of said improvements, to be effected either upon the interest of the Trustee or of the Trustor, or his assigns, and in his name, loss, if any being made payable to said Beneficiary, and it may pay and expend for premiums for such insurance such sums of money as it may deem to be necessary.

The Trustor agrees to keep the above described premises in first class condition, order and repair, and to care for, protect and repair said premises, including improvements, trees, vines and crops thereon. If the Trustor makes default in the performance of any covenant of this deed of trust or in the payment of any of the notes and obligations secured hereby, the said Beneficiary or Trustee, without notice or demand, may enter upon, hold, protect, repair and care for said property, including improvements, trees, vines and crops thereon and may collect the rents, issues and profits thereof. All sums of money advanced, or expenses incurred by said Beneficiary or said Trustee by virtue of any covenant of this deed of trust,

including attorney's fees shall become immediately due from said Trustor to said Beneficiary or Trustee and shall bear interest until paid at the rate of seven percent per annum and shall be secured by this deed of trust.

In the event that the Trustor shall sell, convey or alienate the herein described property, or any part thereof, or any interest therein, all notes and obligations secured by this instrument, irrespective of the maturity dates expressed therein, at the option of the holder hereof, and without demand or notice shall immediately become due and payable.

The Beneficiary may extend the time of payment of any notes and obligations secured hereby to any successor in interest of said Trustor in the trust premises, without discharging the Trustor from liability on said notes or obligations.

FIFTH: In case said Trustor shall pay or cause to be paid the said first mentioned note or notes with interest according to their terms, and also pay all additional loans hereunder, with interest thereon, and also all moneys for which said Trustor shall be liable hereunder, including reasonable expenses of this trust, then these trusts shall cease and said Trustee or its successors shall reconvey, without warranty, the said trust property, and the grantee in such reconveyance may be described in general terms as "the person or persons legally entitled thereto". The recital in such reconveyance of any matters of fact shall be conclusive proof against all persons of the truthfulness thereof. Any part of said property may be reconveyed at the request of the Beneficiary without affecting the liability of the Trustor on any notes and obligations secured hereby. All reconveyances shall be at the cost of the grantee.

SIXTH: If default shall be made in any payment on said

first mentioned promissory note or notes, whether of principal or interest, or of any additional loan made hereunder, or of any other money due or to become due from said Trustor hereunder, or in the performance of any of the conditions or covenants contained herein or in any conveyance under or through which said Trustor claims or derives title, then, or at any time thereafter, the Beneficiary hereunder may consider said note or notes, and all debts, moneys and dues secured hereby as immediately due and payable and said Beneficiary or said Trustee shall record in the office of the County Recorder of the County wherein said property, or any part thereof, is situated, a notice of such breach and election to cause said property to be sold to satisfy said obligations as provided in section 2924 of the Civil Code of the State of California.

On written application of the Beneficiary, and after three months have elapsed following said recordation of said notice, said Trustee, without demand on said Trustor, shall sell said property in whole or in part or parcels at the discretion of the Trustee in the following manner, namely;

Said Trustee shall give notice of the time and place of holding said sale in the manner and for the time not less than that required by the laws of the State of California for sales of real property under deeds of trust. Said Trustee may from time to time postpone the sale of all or any portion of said property by publishing a notice of postponement in the same newspaper or newspapers in which the original notice of sale was published or by public announcement or proclamation thereof made to the persons assembled at the time and place previously appointed and advertised for such sale or postponement. At the time of sale so advertised, or to which said sale may be postponed, said Trustee may sell the property

so advertised, or any part or portion thereof at public auction to the highest bidder for cash in United States gold coin of the present standard of weight, fineness and value, and any Beneficiary hereunder may become a purchaser at such sale; and upon such sale said Trustee, or its successors, shall execute, and after due payment is made, shall deliver to the purchaser or purchasers a deed or deeds of grant, bargain and sale of the property so sold and out of the proceeds thereof shall pay, first, the expenses of such sale and of this trust, and compensation of the Trustee in an amount equal to one per cent (1%) of the amount secured hereby and remaining unpaid but in no event less than twenty-five dollars ($25.00) and counsel fees in an amount equal to five per cent (5%) of the amount secured hereby and remaining unpaid, but in no event less than one hunderd dollars ($100.00) also such sums, if any, as Trustee or Beneficiary shall have paid for procuring an abstract of title or search of or certificate or report as to the title to said premises or any part thereof subsequent to the execution of this instrument, all of which sums shall be secured hereby and become due upon any default made by the Trustors in any of the payments or performance of any of the covenants provided for herein. then all sums with interest due from said Trustor pursuant to paragraphs THIRD and FOURTH of this instrument; then the amount, including interest, unpaid upon the note or notes mentioned in paragraph FIRST hereof; then all additional loans with interest outstanding under paragraph SECOND hereof, and all the surplus, if any to the person or persons legally entitled thereto on the proof of such right.

In any deed executed under these trusts, the recital of the amount of indebtedness, default, application of Benefici-

ary, recordation of notice of breach, posting, publication, postponement of sale, sale, purchase price, and of any other matters of facts affecting the regularity or validity of said sale, shall be conclusive proof of said indebtedness, default, application of Beneficiary, recordation of notice of breach, posting publication, postponement of sale, sale, purchase price, and all other matters and facts affecting the regularity or validity of said sale recited and such deed shall be effectual and conclusive against said Trustor, his heirs and assigns, and all other persons, and shall entitle the purchaser or purchasers to immediate possession of the property thereby conveyed; and a receipt therein for the purchase money recited or contained in the deed executed to the purchaser or purchasers as aforesaid, shall discharge said purchaser or purchasers from all obligations to see the proper application of said money.

SEVENTH: Said Beneficiary may at any time by instrument in writing appoint a successor or successors to, or discharge and appoint a new Trustee in the place of any Trustee named herein or acting hereunder, which instrument executed and acknowledged by said Beneficiary, and recorded in the office of the County Recorder of the County or Counties where said land is situated, shall be conclusive proof of the proper substitution of such successor or successors or new Trustee, who shall have all the estate, powers, duties, rights and privileges of said Trustee predecessor.

EIGHTH: The Trustee shall have the right to maintain a suit to obtain the aid and direction of any court of competent jurisdiction in the execution by the Trustee of any of the trusts hereof, and its decree confirming and validating any act of the Trustee, and directing that any purchaser of the said premises at a trustee's sale, be let into immediate possession

thereof, and providing for orders of court, or other process, requiring the sheriff of the county in which said premises are situated to place and maintain any purchaser thereof from the trustee in quiet and peaceable possession of the premises so purchased.

NINTH: The Beneficiary may bring an action to enforce the payment of said promissory note or notes and recover all indebtedness secured hereby without causing the Trustee to sell said property as herein provided; it being understood that all rights and remedies allowed the Beneficiary and/or the Trustee under the law and this instrument shall be concurrent and cumulative.

All the provisions of this instrument shall apply to and bind the legal representatives, successors and assigns of each party hereto, respectively.

IN WITNESS WHEREOF, the Trustor has executed these presents, the day and year first above written.

BERNHARD DAVIDOW

(Acknowledged by Bernhard Davidow, widower, June 17, 1930, before Notary)

Endorsed: Recorded at request of Title Insurance & Guaranty Co., Jul. 18, 1930 at 3 min. past 10:00 A.M.

"EXHIBIT B"

THIS DEED OF TRUST, made this 10th day of May, A.D., 1930, by and between BERNHARD DAVIDOW, a widower, hereinafter called Trustor, TITLE INSURANCE AND GUARANTY COMPANY, a corporation, hereinafter called Trustee and G. P. ANDERSON, hereinafter called Beneficiary;

WITNESSETH: That Whereas, Trustor is indebted to Beneficiary in the sum of TWENTY-FIVE THOUSAND and 00/100 ($25,000.00) DOLLARS, and has agreed to repay the same, with interest, according to the terms of a certain Promissory Note of even date herewith, executed and delivered therefor by Trustor to Beneficiary;

NOW, THEREFORE, Trustor, for the purpose of securing the payment of said Promissory Note, does hereby grant unto Trustee, all that certain real property in the City and County of San Francisco, and County of Napa, State of California, described as follows:

(The same as described in Paragraph VI of the Complaint)

TO HAVE AND TO HOLD upon the following express Trusts, to-wit:

ONE: During the continuance of these Trusts, Trustor promises and agrees as follows:

(a) To pay, at maturity, all taxes and assessments upon said property, or any part thereof, and upon the debt secured hereby.

(b) To pay, satisfy and discharge, when due, all other claims, liens, charges and incumbrances affecting or purporting to affect the title to said property, and all costs, charges, interest and penalties on account thereof; and to pay all interests or installments due on any prior incumbrances; also all costs, fees, charges and expenses of the Trustee and of these Trusts.

(c) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss, if any, payable to Beneficiary; it being agreed that in the event of a loss the amount collected may, at the option of the Beneficiary, be credited first, upon the interest due, if any, upon any sum

mentioned as security hereby; next, upon the principal sums of any advances made hereunder; next, upon the principal sum of the original indebtedness mentioned as secured hereby, and the remainder, if any, upon the principal of any additional loans made hereunder, and interest shall thereupon cease upon any amount so credited upon any of said principal sums, or said amount or any portion thereof may either be used in replacing or restoring the improvements to a condition satisfactory to Beneficiary or be released to Trustor; in either of which events neither Trustee nor Beneficiary shall be obligated to see to the proper application thereof.

(d) To appear in and defend any action or proceeding affecting, or purporting to affect, said property, these Trusts, or the rights of Trustee or Beneficiary; and to pay all costs and expenses of any action or proceeding, including Attorney's fees in a reasonable sum, whether brought by or against Trustor, Trustee or Beneficiary, and whether progressing to judgment or not. Provided, nevertheless, the Trustee or Beneficiary, or both, may appear in, defend or commence any such action or proceeding, without releasing Trustor from his obligation to pay said costs, expenses and Attorney's fees. The Trustee shall be under no obligation to notify any party hereto of any action or proceeding of any kind.

(e) To repay within thirty days from the date of advancement, and without demand, all sums advanced or expended by Trustee or Beneficiary or either under the terms hereof with interest thereon from the date of advancement until paid, at twelve per cent per annum.

TWO: Should Trustor fail or refuse to make any of the payments or do any of the acts, hereinbefore mentioned, in the manner and at the times aforesaid, then Trustee or Bene-

ficiary, or either, may, without notice to Trustor, make or do the same in such manner and to such extent as they, or either of them, may elect, and may pay, purchase, contest or compromise any claims, liens, or incumbrances which, in their judgment, appear to affect said property, or these trusts.

THREE: Upon payment of all sums secured hereby, Trustee, upon receipt from the holder or holders thereof, of written request reciting said facts of payment and upon the surrender of the note or notes secured hereby, for cancellation, and upon payment of its charges therefor, shall reconvey, without warranty, the estate then held by Trustee hereunder, to the person or persons legally entitled thereto. Trustee may at any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this deed of trust and of the note secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this deed of trust upon the remainder of said property, reconvey to the person legally entitled thereto any portion of the property herein described. The recitals in any such reconveyance of any matters or facts shall be conclusive proof against all persons of the truthfulness thereof.

FOUR: Should a breach or default be made in the performance of any obligation for which this Deed of Trust is security, or in the performance on the part of the Trustor of any obligation in this agreement by the Trustor agreed to be kept and performed, then, or at any time thereafter, the holder or holders of any note or notes, or indebtedness mentioned as secured hereby, may elect to declare all sums secured hereby to be immediately due and payable, and cause the

property hereby granted to be sold in order to accomplish the objects of these Trusts; and upon such election there shall be recorded in the office of the Recorder of the County wherein the aforesaid granted premises, or some part thereof, is situated, a notice of breach and election to sell required by Section 2924 of the Civil Code of this state as in force at the time of giving such notice and then Trustee, its successors or assigns, by its duly authorized officer or agent on demand by Beneficiary, or his assigns, shall sell the above-granted premises, or such part thereof as in its discretion it shall find necessary to sell, in order to accomplish the objects of these trusts, in the manner following, namely:

It shall first give notice of the time and place of such sale in the manner provided by the laws of this state in force at the time of giving such notice, and may from time to time postpone such sale by such advertisement as it may deem reasonable, or without further advertisement, by proclamation made to the persons assembled at the time and place previously appointed and advertised for such sale, and on the day of sale so advertised, or to which such sale may have been postponed, it may sell the property so advertised, or any portion thereof, at public auction at the time and place specified in the notice, in the county in which the property to be sold or some portion thereof is situated, to the highest cash bidder. The Beneficiary, or the holder or holders of said promissory note, may bid and purchase at such sale.

Trustee, upon such sale, shall make (without warranty) execute, and after due payment made, deliver to the purchaser a deed of the premises so sold, and shall apply the proceeds of the sale thereof in payment, FIRSTLY, of the expenses of such sale, together with the reasonable expenses of

this trust, including therein cost of evidence to title, trustee's fee in connection with sale, and counsel fees in an amount equal to five per cent of the amount secured hereby and remaining unpaid which shall become due upon any default made by Trustor in any of the payments aforesaid; and in payment, SECONDLY, of any sum expended by Trustee or Beneficiary under the terms hereof, not then repaid, with accrued interest thereon as herein provided; and in payment, THIRDLY, of accrued interest on the promissory note secured hereby; and in payment, FOURTHLY, of the unpaid principal of said note, or if more than one, the unpaid principal thereof pro rata and without preference or priority; and LASTLY, the balance of such proceeds, if any, to the person legally entitled thereto upon written demand therefor and satisfactory evidence of the right thereto.

In the event of a sale of said premises, or any part thereof, and the execution of a deed therefor under these trusts, the recital therein of default, and of recording notice of breach and election to sell, and of the elapsing of said three months period, and of giving of notice of sale, and of a demand by Beneficiary that such sale should be made, shall be conclusive proof of such default, recording, election, elapsing of time, and of the due giving of such notice, and that the sale was regularly and validly made on due and proper demand by Beneficiary; and any such deed, with such recitals therein, shall be effectual and conclusive against Trustor and all other persons; and the receipt of the purchase money recited or contained in any deed executed to the purchaser, as aforesaid, shall be sufficient discharge to such purchaser from all obligation to see to the proper application of the purchase money, according to the trusts aforesaid.

FIVE: Said Beneficiary may at any time by instrument in writing appoint a new trustee in the place of any trustee named herein or acting hereunder, which instrument, executed and acknowledged by such Beneficiary, and recorded in the office of the County Recorder of the County or Counties where said land is situated,, shall be conclusive proof of the proper substitution of such new trustee, who shall have all the estate, powers and duties of said trustee predecessor.

SIX: This Deed of Trust secures the payment of all the indebtedness and the performance of all the obligations hereinbefore referred to, and in all its parts as herein otherwise provided, applies to, inures to the benefit of, and binds the heirs, administrators, executors, successors and assigns of all and each of the parties hereto, and of any person mentioned herein.

This Deed of Trust is subordinate to prior Deed of Trust executed by same Trustor in the sum of ONE HUNDRED AND FIFTY THOUSAND DOLLARS in favor of Bank of America of California, dated June 17th, 1930, with interest thereon from May 1st, 1930.

This Deed of Trust shall be so construed that wherever applicable with reference to any of the parties hereto or to any person mentioned herein the use of the singular number shall include the plural number, the use of the plural number shall include the singular number, the use of the masculine gender shall include the femine gender, and shall likewise be so construed as applicable to and including a corporation or corporations that may be a party or parties hereto.

IN WITNESS WHEREOF, Trustor has executed these presents the day and year first above written.

(signed) BERNHARD DAVIDOW

(Acknowledged by Bernhard Davidow, a widower, July 15th, 1930, before Notary)

Recorded at request of Title I. & G. Co., Jul. 18, 1930, at 31 min. past 10 A.M.

"EXHIBIT C"

TITLE INSURANCE and GUARANTY COMPANY, as Trustee, under the Deeds of Trust hereinafter particularly described, the first party, hereby grants, without warranty, to G. P. ANDERSON, (a single woman), the second party, all of the estate and interest derived to said first party by all other said Deeds of Trust in and to:

That real property situate in the City and County of San Francisco, State of California, bounded and described as follows:

(The same as described in Paragraph VI. of the Complaint)

And in and to that certain real property situated in the County of Napa, State of California, and bounded and described as follows:

(The same as described in Paragraph VI of the Complaint)

This conveyance is made, pursuant to the powers conferred upon said first party contained in those certain Deeds of Trust executed by BERNHARD DAVIDOW (a widower) to said first party as Trustee for G. P. ANDERSON, dated May 10th, 1930, and recorded on July 18th, 1930, in the office of the County Recorder of the City and County of San Francisco, State of California, in Book 2060 of Official Records, at Page 458, and recorded July 18th, 1930, in the office of the County Recorder of the County of Napa, State of California, in Book 52 of Official Records, at Page 188, and after

the fulfillment of the conditions specified in said Deeds of Trust, authorizing this conveyance as follows:

(a) Default has been made in the payment of the promissory note for which said Deeds of Trust are security, according to the terms thereof.

(b) Said G. P. ANDERSON has recorded in the office of the City Recorder of the City and County of San Francisco, State of California, and of the County of Napa, State of California, notices of such breach and of election to sell, or cause to be sold, said property to satisfy the said obligation.

(c) Not less than three months elapsed between the recordation of said notices of breach and the posting and first publication of the notice of sale of said property.

(d) Said Beneficiary has made due and proper demand upon said Trustee to make sale of said property pursuant to the terms of said Deeds of Trust.

(e) Said Trustee has given notice of the time and place of the said sale of said property, in compliance with the terms of said Deeds of Trust, and also by posting and publication in the manner and for the time required by law.

(f) Said sale of the property situated in the City and County of San Francisco, State of California, hereinbefore described, was made by said Trustee at public auction in the City and County of San Francisco, State of California, the said City and County in which said property is situated, in full compliance with the laws of the State of California, and the terms of said Deeds of Trust, and said second party became the purchaser of said property situated in said City and County of San Francisco, State of California, hereinbefore described at said sale, and paid therefor to said Trustee in lawful money of the United States the sum of $15,000.00;

said sale of the property situated in the County of Napa, State of California, hereinbefore described, was made by said Trustee at public auction in the County of Napa, State of California, the County in which said property is situated, in full compliance with the laws of the State of California, and the terms of said Deeds of Trust, and said second party became the purchaser of said property situated in the County of Napa, hereinbefore described, at said sale, and paid therefor to said Trustee, in lawful money of the United States, the sum of $5,000.00;

IN WITNESS WHEREOF, the said first party has executed this conveyance this 1st day of February, 1932.

TITLE INSURANCE and GUARANTY COMPANY

Walter C. Clark, Vice-Pres.

E. G. Schwarzmann, Secty.

(CORPORATE SEAL)

(Acknowledged by Walter C. Clark, Vice-President, and E. G. Schwarzmann, Secretary, of Tittle Insurance & Guaranty Co., on February 4th, 1932, before Notary Public)

Recorded at request of E. G. Schwarzmann, Feb. 4, 1932, at 29 min. past 2 P:M.

"EXHIBIT D"

KNOW ALL MEN BY THESE PRESENTS:

Whereas, on June 17, 1930, Bernhard Davidow, widower, made, executed and delivered a Deed of Trust to Corporation of America, as Trustee for Bank of America of California, a corporation, as Beneficiary, which Deed of Trust was recorded on July 18, 1930, in the office of the County Recorder of the County of Napa, State of California, in Volume 52 of Official Records, at Page 183, et seq.; and

WHEREAS, Corporation of America is now the Trustee

under said Deed of Trust, and

WHEREAS, pursuant to the terms of said Deed of Trust, the Corporation of America has been requested to execute a partial reconveyance, and is authorized to reconvey the real property hereinafter described, conveyed to it by said Deed of Trust;

NOW, THEREFORE, said Corporation of America, a corporation, as Trustee, does hereby remise, grant, release and reconvey to the person or persons legally entitled thereto all of the estate and interst derived by it through or under said Deed of Trust, in and to the following described portion of the premises therein described, to-wit:

(Description)

That certain real property situate in the Town of St. Helena, County of Napa, State of California, described as follows, to-wit:

(The same as described in Paragraph VI. of the Complaint)

All of the above described premises containing in the aggregate 822.80 acres of land, more or less.

IN WITNESS WHEREOF, said Corporation of America, a corporation, has caused these presents to be executed by an Officer, to-wit: G. J. Panario, of the Bank of America National Trust and Savings Association and ex-officio agent of the said Corporation of America, a corporation, by virtue of a resolution of its Board of Directors, heretofore recorded in the aforesaid County.

Dated: July 15, 1932.

Corporation of America,
a Corporation, Trustee.
By G. J. Panario,
Its Agent

(Acknowledged July 15th, 1932, by "G. J. Panario, an officer, to-wit: Vice-President of the Bank of America National Trust and Savings Association, and ex-officio agent of Corporation of America, a corporation," on behalf of Corporation of America, a corporation, before Notary Public)

A true copy of an original recorded at request of Lachman. Bros, Inv. Co., Jul. 19, 1932, A.D., at 45 mins. past 12 o'clock P.M.

Compared W.Z. D5867 $2.00 Paid Dottie C. Wright
Book McA. County Recorder
Inst. W

By Tanie McArthur,
Deputy Recorder.

(Endorsed) Filed Apr. 29, 1933.

(Title of Court and Cause.) No. 3,572-K

NOTICE OF MOTION FOR APPOINTMENT OF RECEIVER.

To Lachman Bro's Investment Co., G. P. Anderson and Title Insurance & Guaranty Co., defendants above named; and to Messrs Joseph E. Bien and Werner Olds, their attorneys;

To Corporation of America, Bank of America of California and Bank of America National Trust & Savings Association, defendants above named, and to Messrs. Louis Ferrari, Tobias J. Bricca and W. E. Johnson, their attorneys; and to

To M. D. Frank, defendant above named and to Alfred Voyce, her attorney:

TAKE NOTICE: You, and each of you, will please take notice that the plaintiff herein, by his attorney, Herbert N. DeWolfe, will, upon Monday, June 19th, 1933, at the hour of 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, move the Hon. Frank H. Kerrigan, Judge of said Court, in his courtroom in the Post Office Building, corner of

Mission and 7th Streets, in the City of San Francisco, California, for an order appointing a Receiver *pendente lite* herein under and in accordance with his application therefor contained in his complaint herein.

Dated at San Francisco, Calif., this June 5th, 1933.

Herbert N. DeWolfe,

Attorney for Plaintiff.

(ENDORSEMENTS)

Service, by receipt of copy, of the within Notice of Motion is hereby acknowledged at San Francisco, California, this June 7th, 1933.

Joseph E. Bien

Werner Olds

Attorneys for Defendants Lachman Bro's. Investment Co., G. P. Anderson & Title Ins. & Guar. Co.

Louis Ferrari

Tobias J. Bricca

W. E. Johnson

Attorneys for Defendants Bank of America of California, Bank of America National Trust and Savings Association

Alfred Voyce

Attorney for Defendant M. D. Frank.

Filed Jun 7 1933

DISTRICT COURT OF THE UNITED STATES
NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

AT A STATED TERM of the Southern Division of the United States District Court for the Northern District of

California, held at the Court Room thereof, in the City and County of San Francisco, on TUESDAY, THE 27TH DAY OF JUNE, in the year of our Lord one thousand nine hundred and thirty-three.

PRESENT: the Honorable FRANK H. KERRIGAN District Judge.

BERNHARD DAVIDOW,)
vs.)
LACHMAN BRO'S. INVESTMENT) No. 3572
CO., et al.)

The Application for the Appointment of a Receiver herein came on this day to be heard. After argument of attorneys for the respective parties, said matter was submitted and due consideration having been had, it is Ordered that said Application for Receiver be and the same is hereby denied.

(Title of Court and Cause.) No. 3,572-K

MOTION TO DISMISS

Now come the defendants, Lachman Bros. Investment Co., G. P. Anderson, and Title Insurance & Guaranty Co., and move the Court to dismiss the bill of complaint filed in the above action upon the grounds and reasons therefor as follows:

I.

That the Court has no jurisdiction of the action.

II.

That there is insufficiency of fact to constitute a valid cause of action in equity against the defendants and each of them.

WHEREFORE, defendants and each of them pray that they and each of them be hence dismissed with their costs of

suit herein incurred and that plaintiff take nothing by his action.

Joseph E. Bien
Werner Olds
Attorneys for Moving Defendants.

(ENDORSEMENTS)

Receipt of a copy of the within Motion to Dismiss is hereby admitted this 10th day of July, 1933.

....

Attorney for Plaintiff

Filed Jul 10, 1933

(Title of Court and Cause.) No. 3,572-K

MOTION BY DEFENDANTS CORPORATION OF AMERICA, BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION, and BANK OF AMERICA OF CALIFORNIA, TO DISMISS AMENDED BILL.

Come now the defendants CORPORATION OF AMERICA, a corporation, and BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a national banking association, individually and as successor to BANK OF AMERICA OF CALIFORNIA, a corporation, named in the above entitled cause, and move the Court to dismiss the complaint filed in this cause on the twenty-ninth day of April, 1933, as amended by order of this Court on the nineteenth day of June, 1933, for the reason that the said amended bill of complaint shows:

(a) That this Court lacks jurisdiction of this suit.

(b) That said amended bill does not state any matter in equity entitling the plaintiff to the relief prayed for as against these defendants, or either of them, and

(c) That said amended bill does not state facts sufficient to entitle plaintiff to any relief against these defendants, or either of them.

WHERFORE, these defendants pray the judgment of the Court, whether they should further answer, and that they be dismissed hence with their cost herein.

Louis Ferrari

Tobias J. Bricca

W. E. Johnson

Attorneys for Defendants Corporation of America, Bank of America of California, and Bank of America National Trust and Savings Association.

(ENDORSED)

Copy of above Motion to Dismiss received, and service acknowledged this .... day of July, 1933.

....

Attorney for Plaintiff.

Filed Jul. 22, 1933.

(Title of Court and Cause) No. 3,572-K

NOTICE OF MOTIONS TO DISMISS ACTION.

To Lachman Bro's Investment Co., G. P. Anderson and Title Insurance & Guaranty Co., Defendants herein; and to Messrs. Joseph E. Bien and Werner Olds, their attorneys;
To Corporation of America, Bank of America of California and Bank of America National Trust & Savings Association, Defendants herein; and to Messrs. Louis Ferrari, Tobias J. Bricca and W. E. Johnson, their attorneys:

TAKE NOTICE: You, and each of you, will please Take Notice that the Plaintiff herein, by his attorney, Herbert N. DeWolfe, will, upon Monday, August the 14th, 1933, at the hour of 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, bring on for hearing and argument

the Motion to Dismiss the above entitled action heretofore served and filed herein by the Defendants Lachman Bro's Investment Co., et al, and also the Motion to Dismiss said action heretofore served and filed herein by the Defendants Corporation of America, et al, by their said respective attorneys, before the Honorable Frank H. Kerrigan, Judge of said Court in his Court room, No. 332 in the Court House and Post Office Building, at the corner of 7th and Mission Streets, in the City of San Francisco, California.

Dated at San Francisco, California, this August 8th, 1933.

Herbert N. DeWolfe

Attorney for Plaintiff.

(ENDORSEMENTS)

Service, by receipt of copy, of within Notice of Motions to Dismiss is hereby admitted at San Francisco, California, this August 8th, 1933.

Joseph E. Bien & Werner Olds
Attorneys for Defts. Lachman Bro's. Inv. Co., et al.
Louis Ferrari
Tobias J. Bricca
W. E. Johnson
Attorneys for Defts. Corporation of Am., et al.

Filed Aug. 9, 1933.

(Title of Court and Cause) No. 3,572-K

ORDER DISMISSING ACTION AGAINST M. D. FRANK

This cause coming on regularly upon Motion of Plaintiff for an Order Dismissing this action against the Defendant,

M. D. Frank; and the Court having read the evidence offered in support of said Motion and it appearing therefrom that since the commencement of this action, by her grant deed duly executed and delivered, the said defendant has conveyed all her right, title, estate and interest in and to the properties in Paragraph VI. of the Complaint herein described as being situate in the County of Napa, State of California, to the Plaintiff herein, and that said Plaintiff is now the owner and holder of said interest in said property; and it further appearing from such evidence to the satisfaction of the Court that said M. D. Frank is no longer interested in the subject of this action and for such reason is not now a necessary or proper party herein; and being fully advised: It is now, therefore, by the Court, hereby

ORDERED: That this action be and the same is hereby dismissed as to the Defendant, M. D. Frank.

Dated this 14th day of September, 1933.

Frank H. Kerrigan
Judge.

(ENDORSEMENTS)

Receipt of Copy of within Order Dismissing Action against Defendant M. D. Frank is hereby admitted this Sept 14th, 1933.

....

....

Attys. for Defts: Lachman Bros. Inv. Co., G. P. Anderson and Title Ins. & G. Co.
Louis Ferrari
Tobias J. Bricca
W. E. Johnson

Attys. for Defts: Corp. of Am.; Bk of Am. of Calif., and Bank of Am N. T. & S. Assn.

Filed Sept. 14, 1933.

DISTRICT COURT OF THE UNITED STATES
NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

AT A STATED TERM of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco on Wednesday, the 13th day of September, in the year of our Lord one thousand nine hundred and thirty-three.

PRESENT: the Honorable Frank H. Kerrigan, District Judge.

BERNHARD DAVIDOW,)
vs.) No. 3,572-K
LACHMAN BRO'S. INVESTMENT)
CO., et al.)

The Motion to Dismiss the Complaint, having been heretofore submitted, now being fully considered, it is Ordered that said Motion is hereby granted without leave to Amend on grounds that the Complaint does not state facts sufficient to constitute a cause of action, and that this Court is without jurisdiction because no Federal question is involved.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

Bernhard Davidow, Plaintiff, vs. Lachman Bro's. Investment Co., a corporation; G. P. Anderson; Title Insurance and Guaranty Co., a corporation; Corporation of America, a corporation; Bank of America of California, a corporation; M. D. Frank; Bank of America National Trust & Savings Association, a corporation; John Doe; Richard Roe; and James Moe, whose true names are to the plaintiff unknown, Defendants	No. 3,572-K (In Equity) DECREE

This cause having been brought on regularly to be heard before the Honorable Frank H. Kerrigan, Judge, on the 11th day of September, 1933, upon the two Motions of Defendants to Dismiss the Bill of Complaint of the Plaintiff, as amended; the Plaintiff appearing by his attorneys, Herbert N. DeWolfe and Vincent Surr, and the Defendants Lachman Bro's. Investment Co., G. P. Anderson and Title Insurance & Guaranty Co. appearing by their attorneys Joseph E. Bien and Werner Olds, and the Defendants Corporation of America, Bank of America of California and Bank of America National Trust & Savings Association appearing by their attorneys Louis Ferrari, Tobias J. Bricca and W. E. Johnson, the action as to the defendant M. D. Frank having heretofore, upon motion of Plaintiff, been dismissed; and the Court having heard and duly considered the arguments of counsel for and

against the granting of said Motions and each of said Motions, and having thereafter, and upon, to-wit, September 13th, 1933, duly made and entered its Minute Order granting the said Motions to Dismiss the said Bill of Complaint for the following reasons and upon the following grounds, viz,

1. That the said Bill of Complaint, as amended, does not state facts sufficient to constitute a cause of action; and
2. That this Court is without jurisdiction because no Federal Question is involved;

and the Court being fully advised in the premises is of the opinion that said Motions to Dismiss, and each of said Motions, the same having the effect of Demurrers to Plaintiff's Bill of Complaint, as amended, should be granted. It is therefore, by the Court, hereby

ORDERED, ADJUDGED AND DECREED:

(a) That the Motions to Dismiss the Bill of Complaint of the Plaintiff, as amended, filed herein by Defendants, and each of said Motions, be and they are and each of them is hereby granted without leave to the Plaintiff to amend his said Bill;

(b) That this cause, in its entirety, be and the same is hereby dismissed;

(c) That the Defendants have and recover of and from the Complainant their costs and disbursements, herein to be taxed as in such cases.

Done in Open Court this September 26th, 1933.

Frank H. Kerrigan,
Judge

Approved as to form and copies received at San Francisco, California, this September 25th, 1933.

Louis Ferrari
Tobias J. Bricca
W. E. Johnson
Attys for Defts. Corp of Am., Bk of Am of California, and Bk of Am Nat. Tr & Sav Assn.
Joseph E. Bien & Werner Olds
Attys for Defts. Lachman Bros. Inv. Co., G. P. Anderson and Title Ins. & G. Co.

(Endorsed)
Filed and Entered Sep 26 1933.

(Title of Court and Cause) No. 3,572-K

PETITION FOR APPEAL AND ORDER ALLOWING APPEAL.

TO THE HONORABLE FRANK H. KERRIGAN, JUDGE:

The above named Plaintiff-Appellant, feeling aggrieved by the decree rendered and entered in the above entitled cause, on the 26th day of September, 1933, does hereby appeal from said decree to the Circuit Court of Appeals, for the Ninth Circuit for the reasons set forth in the Assignment of Errors filed herewith; and it is prayed that this appeal be allowed and that Citation be issued as by law provided, and that a Transcript of the record, proceedings and documents upon which said Decree was based, duly authenticated, be transmitted to said Circuit Court of Appeals for the Ninth

Circuit under the rules of said Court, all as in such cases provided.

Your Petitioner further prays that the proper order relating to Appeal or Cost Bond required of him in such cases be made.

Dated at San Francisco, California, this 28th *say* of September, 1933.

Bernhard Davidow,
Plaintiff-Appellant,
By Herbert N. DeWolfe
and Vincent Surr,
His Attorneys.

Appeal allowed upon giving Bond as required by law in the sum of $250.00.

Frank H. Kerrigan, Judge.

(ENDORSEMENTS)

Service by receipt of copy of the within Petition for Appeal is hereby admitted at San Francisco, California, this Sept. , 1933.

....

....

Attys for Defts. Lachman Bros. Inv. Co., G. P. Anderson and Title Ins. & G. Co.

....

....

....

Attys for Defts. Corp. of Am., Bk of Am of Calif, and Bk of Am N. T. & S. Assn.

Filed, Sep 28 1933.

(Title of Court and Cause) No. 3,572-K

ASSIGNMENT OF ERRORS.

Comes now the said Plaintiff-Appellant, Bernhard Davidow, and files herein the following Assignment of Errors upon which he will rely in the prosecution of his appeal herein from the Decree of this Court entered in this cause on the 26th day of September, 1933, that it to say:

I.

The Court erred in granting Defendants' Motions to Dismiss Plaintiff's Complaint, as amended, upon the ground that the same failed to state a cause of action.

II.

The Court *errd* in granting Defendants' Motions to Dismiss Plaintiff's Complaint, as amended, upon the ground that the First Cause of Action therein set forth failed to state a cause of action.

III.

The Court *errd* in granting Defendants' Motions to Dismiss Plaintiff's Complaint, as amended, upon the ground that the Second Cause of Action therein set forth failed to state a cause of action.

IV.

The Court *errd* in granting Defendants' Motions to Dismiss Plaintiff's Complaint, as amended, upon the ground that said Complaint failed to set forth a Federal Question.

V.

The Court *errd* in refusing to appoint a Receiver *Pendente Lite* as prayed for in the Complaint.

WHEREFORE, This Plaintiff-Appellant prays this Honorable Court that the said Decree may be reversed and for such

other and further relief as to the Court may be deemed just and proper.

Dated at San Francisco, California, September 28th, 1933.

Herbert N. DeWolfe
Vincent Surr
Attorneys for Plaintiff-Appellant.

(ENDORSEMENTS)

Service by receipt of copy of the foregoing Assignment of Errors is hereby admitted at San Francisco, Calif., Sept. ......, 1933.

....

....

....

Attys. for Defts. Corp of Am; Bk. of Am. of Calif; Bk of Am. Nat Tr. & Sav. Assn.

....

....

Attys for Defts Lachman Bros. Inv. Co.; G. P. Anderson; Title Ins & G Co.

Filed Sept 28 1933

(Title of Court and Cause) No. 3,572-K

NOTICE:

TAKE NOTICE:

To the Defendants-Appellees to the above-entitled action, and to Messrs. Joseph E.Bien, Werner Olds; Louis Ferrari, Tobias J. Bricca and W. E Johnson, their Attorneys:

You, and each of you, will please Take Notice that the Plaintiff-Appellant above named, Bernhard Davidow, has this day filed and entered in the above cause the following matters, copies of each of which are herewith served upon you:

1. Petition for Appeal;
2. Allowance of said Appeal;
3. Assignment of Errors;

Dated at San Francisco, California, this September 28th, 1933.

Herbert N. DeWolfe
Vincent Surr
Attys for Plff-Appellant.

(ENDORSEMENTS)

Service by receipt of copy of each of the matters above mentioned is hereby received, this Sept. 28th, 1933.

Joseph E. Bien
Werner Olds
Attys. for Defts' Lachman Bros. Inv. Co; G.P. Anderson; Title Ins. & G. Co.
Louis Ferrari
Tobias J. Bricca
W. E. Johnson
Attys for Defts. Corp of Am; Bk of Am. of Cal; Bk of Am. N T & S As'n.

Filed Oct. 3, 1933.

KNOW ALL MEN BY THESE PRESENTS,

That I, Bernhard Davidow, as principal and the sum of

$250.00 Cash herewith deposited, surety, are held and firmly bound unto the Appellees named herein in the full and just sum of Two Hundred Fifty & no/100 ($250) dollars to be paid to the said Appellees, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 14th day of October in the year of our Lord One Thousand Nine Hundred and Thirty-three.

WHEREAS, lately at a District Court of the United States for the Northern District of California, Southern Division in a suit depending in said Court, between said Bernhard Davidow, plaintiff, and Lachman Bros. Investment Co., et al, defendants a Decree was rendered against the said plaintiff and the said plaintiff having obtained from said Court an allowance of appeal to reverse the decree in the aforesaid suit, and a citation directed to the said defendants citing and admonishing them to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California, within thirty days from and after Sept. 28th, 1933.

Now, the condition of the above obligation is such, That if the said plaintiff-appellant, Bernhard Davidow shall prosecute his said appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

Bernhard Davidow (seal)

(ENDORSED)

Form of bond and sufficiency of sureties approved.

Filed Oct 14 1933 Frank H. Kerrigan, Judge.

(Title of Court and Cause) No. 3,572-K

NOTICE OF FILING APPEAL BOND

To the Defendants-Appellees to the above-entitled action, and to Messrs. Joseph E. Bien and Werner Olds; and to Messrs. Louis Ferrari, Tobias J. Bricca and W. E. Johnson, their Attorneys:

TAKE NOTICE:

You, and each of you, will please Take Notice that the Plaintiff-Appellant herein has this day filed his Appeal Bond herein and deposited therewith with the Clerk of said Court the sum of $250.00 cash as security therefor, and that the same has been approved and accepted by the Court.

Dated at San Francisco, California this October 14th, 1933.

Herbert N. DeWolfe
Vincent Surr
Attorneys for Plaintiff-Appellant.

(ENDORSEMENTS)

Receipt of a copy of the foregoing Notice of Filing Appeal Bond, is hereby admitted this October 14th, 1933.

Louis Ferrari
Tobias J. Bricca
W. E. Johnson
Attys for Defendants Corporation of America, et al.
Joseph E. Bien
Werner Olds
Attys for Defts Lachman Bros. Inv. Co., et al.

Filed Oct. 16, 1933.

(Title of Court and Cause) No. 3,572-K

PRAECIPE FOR RECORD ON APPEAL.

To the Clerk of said Court:

Please prepare, print and certify a Transcript of the Record in the above entitled cause for the appeal herein to the Circuit Court of Appeals for the Ninth Circuit, consisting of the following portions of the Record herein:

1. Citation;
2. The Complaint as amended;
3. Notice of Motion for Appointment of Receiver;
4. Court's Minute Order of June 27th, 1933, denying Receiver;
5. Motion to Dismiss of Defendants Lachman *Bross.* Inv. Co., et al;
6. Motion to Dismiss of Defendants Corporation of America, et al;
7. Notice of Motions to Dismiss Action;
8. Court Order dismissing action as to Defendant M. D. Frank;
9. Court's Minute Order of Sept. 13, 1933, granting Motions to Dismiss;
10. Decree Dismissing Action without Leave to Amend, entered herein Sept. 26th, 1933;
11. Petition for Appeal and Allowance endorsed thereon;
12. Assignment of Errors;
13. Notice of filing Petition for Appeal-Allowance-and Assmt of Errors;
14. Appeal Bond and Notice of filing same;
15. This Praecipe for Transcript of Record

(a) Omit the title of Court and cause from all matters except the Complaint and Decree; and insert in lieu thereof: "(Title of Court and Cause)"; (b) Omit the description of the two pieces of real property involved herein from all exhibits to the Complaint and insert in lieu thereof: "(The same as described in Paragraph VI. of the Complaint)"; (c) Omit all verifications and acknowledgements and insert in lieu thereof a brief statement that the same was verified

(or acknowledged) by..........................on (giving date), before a (title of officer)

Herbert N. DeWolfe
Vincent Surr
Attorneys for Appellant.

(ENDORSED)

San Francisco, Oct 4, 1933.
Copy of Foregoing Praecipe for Record received:

Joseph E. Bien
Werner Olds
Attys for Lachman Bros. Inv. Co., et al
Louis Ferrari
Tobias J. Bricca
W. E. Johnson
Attys for Defts Corporation of Am., et al.

Filed Oct 14 1933.

(TITLE OF COURT AND CAUSE) No. 3572-K

I, WALTER B. MALING, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing pages, numbered 1 to 62, inclusive, contain a full, true and correct transcript of the records and proceedings in the Equity Suit entitled Bernhard Davidow, Plaintiff, vs. Lachman Bro's., Investment Company, et al, Defendants, No. 3572-K, as the same now remains on file and of record in my office.

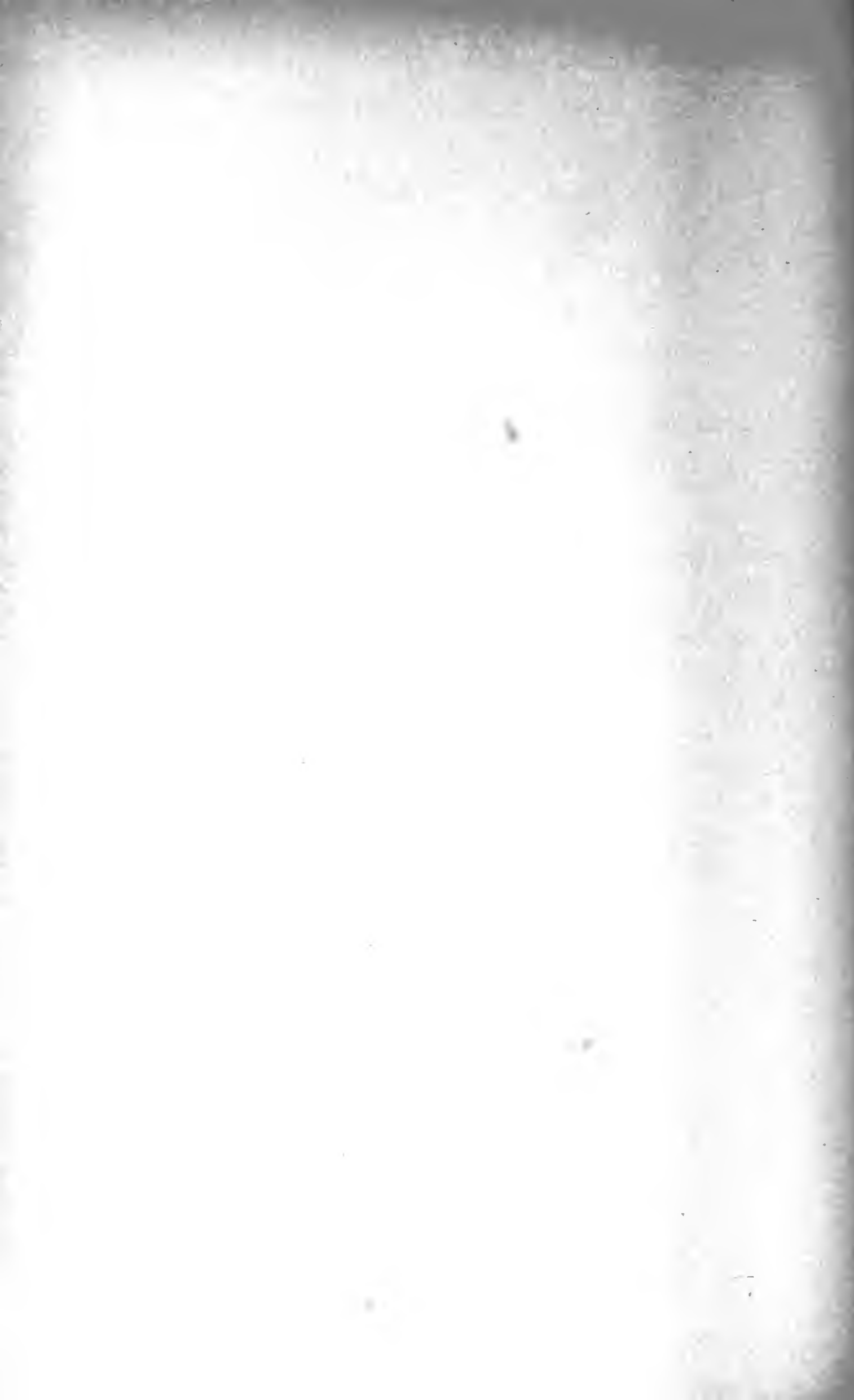
I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of $106.55, and that all the fees of my office have been paid by the attorneys for the appellant herein, and that the original citation issued in said suit is hereto annexed.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this the.. day of November, 1933.

WALTER B. MALING, Clerk

(SEAL) by J. P. WELSH

Deputy Clerk



No. 7,323

United States
Circuit Court of Appeals
For the Ninth Circuit

6

Bernhard Davidow,

Appellant,

vs.

Lachman Bro's Investment Co., a corporation; G. P. Anderson; Title Insurance & Guaranty Co., a corporation; Corporation of America, a corporation; Bank of America of California, a corporation; Bank of America National Trust & Savings Association, a corporation,

Appellees.

Brief for Appellant

Upon Appeal from the District Court of the United States for The Northern District of California, Southern Division.

HERBERT N. DEWOLFE
332 Lick Building, San Francisco
Attorney for Appellant

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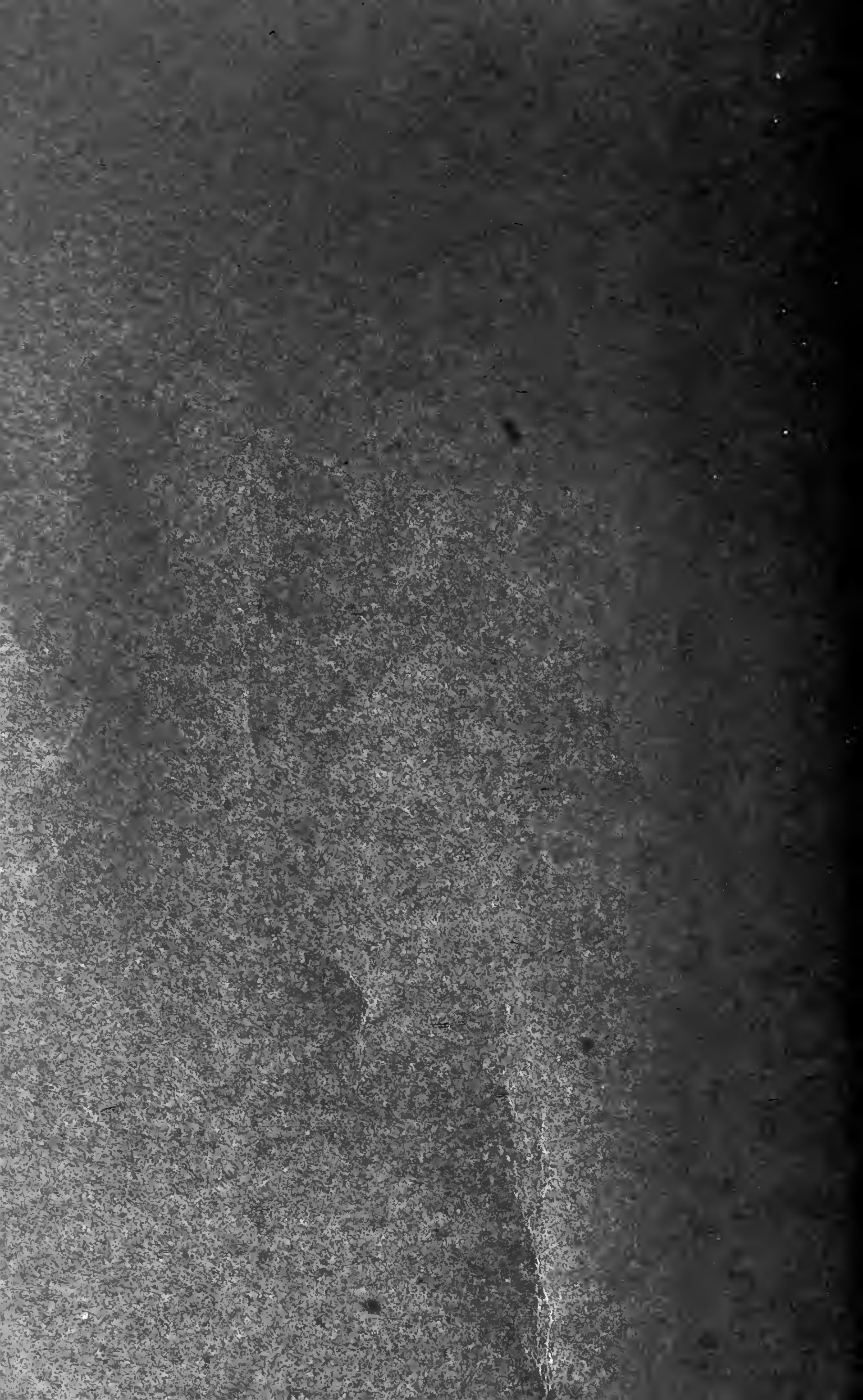

No. 7,323

United States
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Bernhard Davidow,

Appellant,

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Lachman Bro's Investment Co., a corporation; G. P. Anderson; Title Insurance & Guaranty Co., a corporation; Corporation of America, a corporation; Bank of America of California, a corporation; Bank of America National Trust & Savings Association, a corporation,

Appellees.

Brief for Appellant

Upon Appeal from the District Court of the United States for The Northern District of California, Southern Division.

HERBERT N. DEWOLFE
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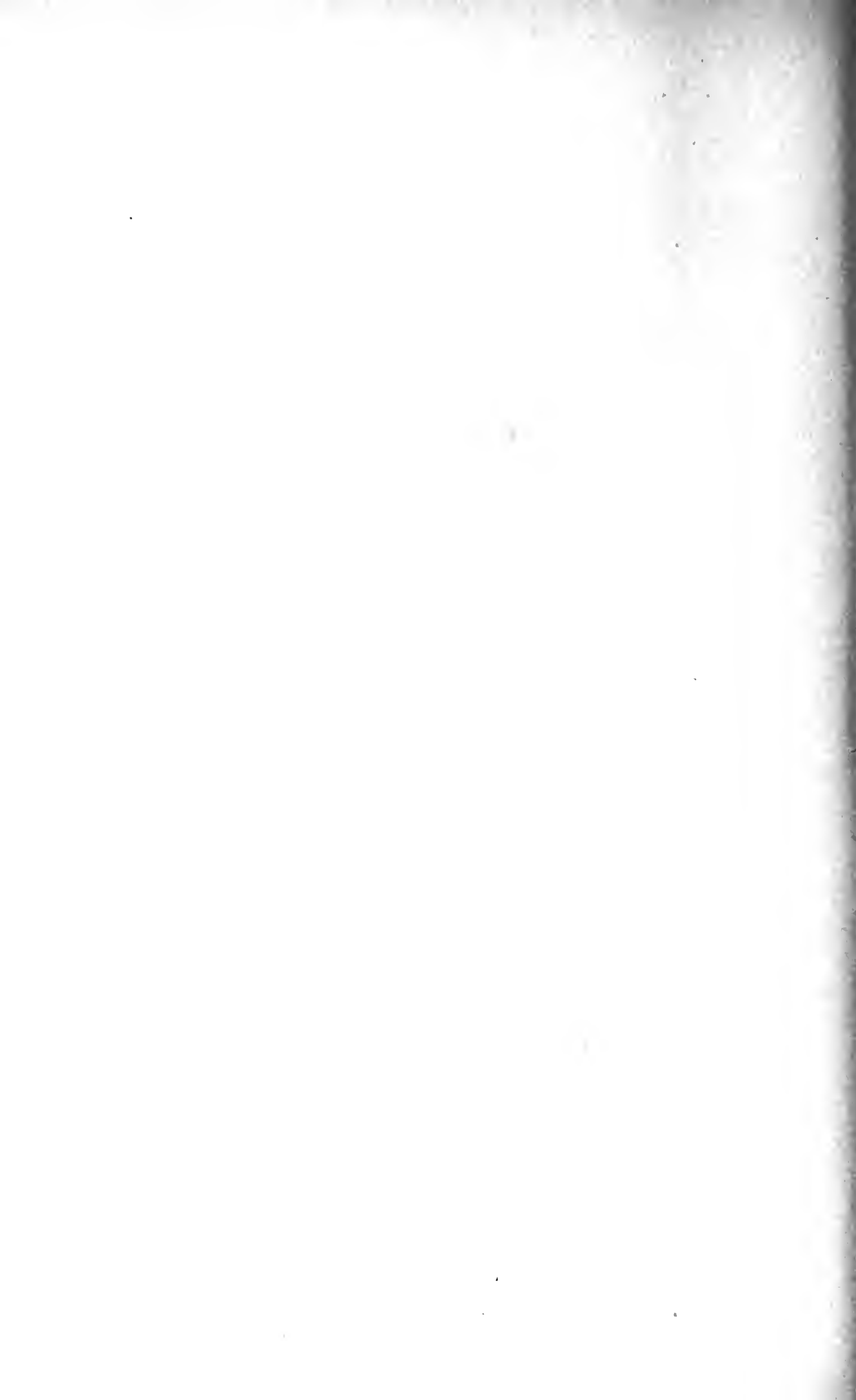

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United States Circuit Court of Appeals
For the Ninth Circuit

Bernhard Davidow, *Appellant,* vs. Lachman Bro's Investment Co., a corporation; G. P. Anderson; Title Insurance & Guaranty Co., a corporation; Corporation of America, a corporation; Bank of America of California, a corporation; Bank of America National Trust & Savings Association, a corporation, *Appellees.*	No. 7,323

BRIEF FOR APPELLANT

Upon Appeal from the District Court of the United States for The Northern District of California, Southern Division.
Honorable Frank H. Kerrigan, Judge.

I.

ASSIGNMENTS OF ERROR

This is an appeal from a final decree. Defendants below interposed motions to dismiss plantiff's bill of complaint. Both motions were based upon the same grounds: (1) That the bill failed to state a cause of action, and (2) That the court was without jurisdiction as no Federal question was involved. (Trans. 47-48). The court granted these motions (Trans. 51). The hearing in this court will be upon the sufficiency of the bill to withstand these two objections, and further, that the court erred in refusing to appoint a receiver *pendente lite.* (Trans. 45).

We are somewhat at a loss to understand the position of the court below, as Judge Kerrigan at no time expressed an opinion upon any question involved.

II.

STATEMENT OF FACTS

The bill alleges the following facts, which are admitted:

(1). THE FIRST CAUSE OF ACTION

(Transcript p. 4)

On June 17th, 1930, appellant was the owner of two pieces of real property, one a four story brick business block in the City of San Francisco, of the approximate value of $300,000, having a lease income of $1,380 per month; and a country estate in Napa County of the value of $200,000. Upon that date he delivered his first deed of trust in blanket form to both properties to Corporation of America, trustee, to secure his promissory note in the sum of $150,000, due one year after date, to Bank of America of California, beneficiary. This deed of trust is attached to the bill as "Exhibit A". (Trans. p. 26). It is still executory. (Par. VII, Trans. p. 9.)

Thereafter, and upon July 15th, 1930, (although dated May 10th, 1930) appellant delivered his second deed of trust in blanket form to these same properties to Title Insurance & Guaranty Co., trustee, to secure his note in the sum of $25,000, due six months after date to G. P. Anderson, beneficiary. (Trans. p. 33, "Ex. B"). Anderson had no financial interest in the matter but was merely acting as a dummy for appellee Lachman Bros. Investment Co. (hereinafter called Lachman) (Trans. p. 10.)

Upon February 20th, 1931, appellee Anderson instituted execution proceedings upon her security, appellant's second deed of trust, by recording her notice that appellant had defaulted in the payment of his promissory note and of her election to sell the property covered by said second deed of trust to satisfy her $25,000 note. The proceedings were conducted in accordance with California Civil Code Section 2924 (Pars. X and XI, Trans. pp. 14, 15).

Thereafter, upon instructions from the beneficiary, the trustee, Title Insurance & Guaranty Co. (hereinafter called the second trustee) proceeded with the execution of said deed of trust. In so doing it followed, literally, the provisions and requirements of said C. C. 2924 (Trans. p. 15). The notices posted and published by the trustee, under C. C. P. 692, recited that the real property described would, upon certain days and at certain places, be offered for sale and sold to the highest bidder to satisfy the $25,000 indebtedness of plaintiff. Two separate and distinct notices of sale were given, one in each of the counties where the properties were situate, and only the property located in the county where the notice was given was described in that notice, and no reference whatsoever to the sale of the other property covered by the deed of trust was mentioned, referred to or described in that notice. Such notice, it is alleged, being insufficient, caused the sale thereunder to be an unlawful "taking" contrary to Amendment XIV of the Federal Constitution (Trans. 18). Neither of said notices of sale referred to the first deed of trust then outstanding against said properties. (Trans. p. 16.) The San Francisco property was stricken off to the appellee Anderson, the nominal beneficiary, for the sum of $15,000, and the Napa County estate

for $5,000. (Trans. p. 12.) Thereafter the trustee executed its conveyance of the title held by it to appellee Anderson to both of said properties. (Trans. 15-16.) A copy of this conveyance is attached to the bill as "Exhibit C." (Trans. p. 40.)

Thereafter Anderson conveyed the interest derived from the trustee to appellee Lachman, the real beneficiary. (Par. XII, Trans. p. 16). A copy of this conveyance is attached to the bill as "Exhibit D". (Trans. p. 42.) Appellee Lachman was the holder of that interest at the time the bill was filed in the court below.

Appellee Lachman took possession of the San Francisco property February 1st, 1932. (Trans. p. 20). At that time the leasehold income from this property was in the approximate sum of $1,380 per month. Lachman has collected these rentals from that time and has never accounted to appellant therefor. (Trans. p. 20, Par. XV.)

Upon this showing appellant applied to the lower court for the appointment of a receiver *pendente lite* to collect and disburse these moneys under the direction of the court. (Trans. p. 44.) The application was denied. (Trans. p. 45.)

This cause of action shows and alleges that all the proceedings had and done by the beneficiary and trustee in the execution of the second deed of trust followed, literally, the procedure enacted by the California legislature for the execution of deeds of trust, the same being Civil Code Section 2924 and C. C. P. 692. (Trans. Pars. X, XI, pp. 14, 15.)

The second trustee, in following this procedure for the purpose of executing its second or subordinate deed of trust, while

the first trust deed was still outstanding as an executory contract, ran afoul Section 1, of Amendatory Article XIV of the Federal Constitution, being the taking of appellant's property without due process of law (Trans. 17, Par. XIII). The supposed laws as construed by the trustee and beneficiary and all attempted proceedings under them were void. One conclusion being for the reason that under the authority of said Civil Code Section 2924 the Notices of Sale recited that the trustee would *sell the property* when, as a matter of law, it had no vested title to the property. (Trans. p. 17-18, Par. XIII.) Also on the further ground that the notice was insufficient to warrant a sale.

This cause of action further alleges that Civil Code Section 2924 is, in itself and upon its face, in conflict with the Federal Constitution for the reason that it authorizes the selling of the whole property when only "an estate" therein has been transferred as security. (Par. XIII, Trans. 17-18.)

Two distinct promises to renew this second loan, based upon good and sufficient considerations, were made by the officer of Lachman Bros. Investment Co., who negotiated and handled this loan, Jack Rittigstein, its Vice-President and acting Secretary. After receiving and retaining these considerations Lachman breached both of its said agreements, showing that it made the same without any intention of fulfilling its promises. (Par. VIII, Trans. pp. 10-11: Par. IX, p. 13-14.)

The several acts and proceedings of the appellee Lachman from the breach of its contracts to renew its loan and all its actions thereafter to and including its acquistion of the legal title to the Napa County properties are set forth in the com-

plaint as fraudulent, deceitful, illegal, and intended only for the purpose of illegally acquiring the properties of appellant.

(2) THE SECOND CAUSE OF ACTION
(Trans. 21)

All the allegations of the first cause of action are incorporated in and made a part of the second cause of action by reference. (Trans. 21.)

This cause of action further shows that the first deed of trust was delivered to the first trustee as security for appellant's promissory note to appellee Bank of America of California in the sum of $150,000, due one year after June 17th, 1930, the date of its delivery.

On or about July 15th, 1932, Lachman approached the appellee Bank of America and offered to pay the sum of $25,000 for the release of the Napa County property to it by the first trustee. This offer was accepted by the appellee Bank and upon the last named date the first trustee delivered to Lachman its deed of conveyance of the Napa County properties. That deed was recorded in the office of the County Recorder for Napa County at the request of appellee Lachman upon July 19th, 1932, and is now of record in that county.

The negotiations for the Napa County property and the execution and delivery of the deed by the first trustee to Lachman and Lachman's recordation of the same, the complaint shows (Trans. 23), were all had and done without the knowledge or consent of appellant Davidow, the trustor under said first deed of trust.

(3) THE PRAYER FOR RELIEF
(Trans. 24)

The bill prays for decree of the court:

1. That none of the defendants has any interest in the properties.

2. That the payment of the $25,000 by Lachman to the Bank on appellant's $150,000 obligation be adjudged a voluntary payment.

3. That appellee Corporation of America be forever enjoined from executing appellant's first deed of trust.

4. That appellee Bank of America be enjoined from enforcing the collection of appellant's $150,000 promissory note.

5. That appellees be ordered and directed to surrender up for cancellation all the promissory notes, deeds of trust, etc., executed and delivered by appellant in order that the same may be destroyed.

6. That appellant be decreed to be the owner of the property situate in the City and County of San Francisco and that his grantee M. D. Frank be adjudged the owner of the Napa County properties. (The record now shows that the Napa County property has been re-conveyed to appellant and that he is now the owner thereof and that this action has been dismissed against the defendant M. D. Frank.)

7. This prayer asks the appointment of a receiver *pendente lite* to collect and disburse the rents from the San Francisco property under the direction of the court, and further that Lachman be ordered and directed to account to plaintiff for all rents collected by it from said premises up to the time of the

appointment of such receiver.

9. That appellant have and recover such further and additional relief as to the court may be deemed just and equitable, and his costs and disburstments.

III.

ARGUMENT

(1) INTRODUCTION

The facts in this case are undisputed. They are not complex but simple and easily comprehended. The law governing is likewise simple, easily comprehended, uniform and undisputable. The bill dismissed not only states a cause of action cognizable in equity but it alleges two such causes. Further, the Federal Question involved has been so often ruled upon by the United States Supreme Court that it is no longer an open question. However, with our sincere apologies to the Judge who dismissed the bill, had we presented our case in the lower court as it is presented here, we would probably now be on the other end of this appeal.

The case before us presents legal principles applicable to deeds of trust under the California laws. Since a deed of trust is given for the same purpose as a mortgage is given—real estate security for a loan—it will be necessary to distinguish fundamental principles in the two in order not to confuse the law governing in this case. All these rules of law have been definitely settled in this state so that it will be unnecessary to go into detail regarding them.

In the first place, it should be remembered that

> Real property within this state is governed by the law of this state, except where the title is in the United States. C. C. 755.

Also that a deed of trust is a conveyance and passes the title:

> Except as hereinafter otherwise provided, every express trust in real property, valid as such in its creation, vests the whole estate in the trustees, subject only to the execution of the trust. C. C. 863.

That a mortgage is an encumbrance and merely creates a lien:

> Mortgage is a contract by which specific property is hypothecated for the performance of an act, without the necessity of a change of possession. C. C. 2920.

> A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale. C. C. P. 744.

> The term "encumbrances" includes taxes, assessments, and all liens upon real property. C. C. 1114.

See also: McMillan v. Richards, 9 Cal. 365;

Bank of Italy v. Bentley, 217 Cal. 644, 655; 20 P. 2d 940.

It is said in the case last cited:

> Although, as already pointed out, this state, at an early date, adopted the "lien" theory of mortgages, it adopted the "title" theory in reference to deeds of trust.

A power of sale in a mortgage is, in effect, a power-of-attorney whereby the donee conveys the title to the property from the owner, the mortgagor, to the purchaser:

> Goldwater v. Hibernia S. & L. Soc., 19 Cal. App. 511, 126 Pac. 861.

At first blush there appear to be two lines of decisions in California with reference to what title passes under a deed of trust. However, upon close study of these decisions it will be disclosed that while the conclusions in them all are correct, the theory in some of them is erroneous. The errors, when sifted down, consist in construing the trustee's title; also the possessory rights of a trustor. The rules governing deeds of trust cannot be arrived at by comparing such deeds with mortgages. The two subjects are governed by separate rules and each must stand alone. The rules controlling each must be construed and applied with reference to its own subject solely. We will go into further detail in discussing our First Cause of Action.

(2) THE FIRST CAUSE OF ACTION

For the purpose of determining rights and liabilities under the second deed of trust herein, it is necessary to first consider the legal atmosphere created by the first deed of trust.

(a) Title of First Trustee.

Appellant, Davidow, conveyed to Corporation of America, the first trustee, the title to both pieces of property in fee upon condition subsequent. That is, the first trustee took the title in fee subject to Davidow's right to pay off his $150,000 obligation and thus have the legal title re-conveyed. C. C. 863.

Regarding the quantum of title so conveyed: A very well considered case is Robinson v. Pierce, 118 Ala. 273. Starting at the bottom of page 289 Mr. Justice Head says:

> It is also laid down, and nowhere disputed, that, "Where an estate is given to trustees, in fee, upon trusts that do not exhaust the whole estate, and a power is superadded which can only be exercised by the trustees

> conveying in fee simple, the trustees will take the fee, and the estate conveyed by them will be sustained by the fee in them, and not by the mere power." 1 Perry on Trusts, S. 316.

Also the case of Briggs v. Davis, 20 N. Y. 15; and especially the opinion of Mr. Justice Denio on the re-argument of the case, reported in 21 N. Y. 574, 575, 576, and 578.

But it is unnecessary to go outside of our own state for the same rule. Judge Kerrigan, concurred in by Judges Waste and Richards, in Bryant v. Hobert, 44 Cal. App. 315, 317, in part says:

> The effect of such a deed (of trust), says the Court in the first of those cases, is to convey the legal title to the trustee, who is thereby vested with the absolute legal title to the premises so far as is necessary to enable him to convey it to the purchaser at the trustee's sale free of all right, title, interest, or estate of the trustors, or anyone claiming under or through them.

However, we are not obliged to quote either text book or court authority. The California statute is clear, unambiguous and controlling here. Stripped of its unnecessary verbiage, it reads as follows:

C. C. 863.

> Every express trust in real property vests the whole estate in the trustees, subject only to the execution of the trust.

This statute, as applied to deeds of trust given as security for a loan, only, serves a double purpose. (a) It declares that a deed of trust conveys the absolute fee title to the trustees who are thereby authorized to convey the title in fee simple absolute

(C. C. 762) in the execution of their trust upon default in the payment by the trustor; and, (b) it retains the equitable or beneficial estate or interest in the real property in the trustor as long as the trust remains executory. "Subject only to the execution of the trust." This portion of the statute has, in a number of the California cases, been overlooked or misconstrued in its application to trust deeds. The duties of trustees under deeds of trust are passive until the happening of either of two events: (1) The discharge of the obligation; or, (2) the default in its payment. Their trust does not require the performance of any service by them, as a rule, until it becomes necessary to terminate their trust by re-conveyance or sale of the property. For such reason, under the statute quoted, the trustor is permitted to treat the property as though he were the owner until the trustees terminate his interest by a conveyance after sale. He retains no estate other than a reversion. (Briggs v. Davis, 20, N. Y. 15; In re-argument 21 N. Y. 574.)

It will be noted that in some of the California cases the authority to sell the property under a deed of trust is likened to "a power in trust" or a power in a mortgage. The trustees, under a trust deed, convey under authority of their express trust, not under a power. Under a mortgage, the authority is merely a *power-of-attorney*. The law governing these two instruments should not be confounded.

(b) Title of Second Trustee.

As we have conclusively shown (1) a deed of trust is a conveyance of the legal title; (2) a conveyance by the trustee is in the execution of his trust and not in the execution of any "power of sale," as under a mortgage; (3) the trustee conveys

the title reposed in him by the deed of trust conveyance, and not the title of the owner.

The first deed of trust conveyed to the first trustee the fee title to both pieces of property upon *condition subsequent*. C. C. 708. We respectfully submit: The second deed of trust conveyed the same title to the second trustee upon *condition precedent*. The condition which would have determined the title in the first trustee was the identical condition which would have, by operation of law, conveyed the same title to the second trustee. That contingent event was the payment, or other disposition, of Davidow's first obligation of $150,000.

The difference between a *reversion* and a *remainder* must be clearly conceived and remembered. The two estates are defined in the California laws and are controlling here. A reversion is thus defined.

C. C. 768.

> A reversion is the residue of an estate left by operation of law in the grantor or his successors, or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised.

A remainder is also defined by the Civil Code:

C. C. 769.

> When a future estate, other than a reversion, is dependent on a precedent estate, it may be called a remainder, and may be created and transferred by that name.

It is said in 23 R. C. L. 483, Sec. 5:

> Blackstone (2 Com. 163) broadly defines an estate in

> remainder to be "an estate limited to take effect and be enjoyed after another estate is determined."

And cites in support of the section Bunting v. Speek, 41 Kan. 424, 3 L. R. A. 690, 21 Pac. 288.

The same authority (23 R. C. L. 483, Sec. 6) thus clearly distinguishes between the two estates:

> While a remainder is the remnant of the estate which the grantor parts with, the reversion is the remnant left in him which he does not part with. A remainder differs from a reversion in several particulars. A remainder is always created by the act of the parties, while a reversion arises by operation of law. A remainder is a part of the estate given to another, while a reversion is the whole estate after the particular estate shall have expired.

A reading of the second deed of trust herein (Exhibit B, Trans. 33) will disclose two important points: (1) The instrument is in words and figures a *first* deed of trust, being such *second* trust deed, however, in point of time of its delivery; and (2) in its paragraph SIX (Trans. 39) it admits that its granted estate is upon condition precedent in the following language:

> This Deed of Trust is subordinate to prior Deed of Trust executed by same Trustor in the sum of One Hundred and Fifty Thousand Dollars in favor of Bank of America of California, dated June 17th, 1930, with interest thereon from May 1st, 1930.

From these facts it becomes conclusive that the estate granted this second trustee was a *conditional contingent remainder* in fee—a conditional fee limited upon a fee. In support of this assertion, the following sections of our Civil Code become pertinent and conclusive:

C. C. 707.

The time when the enjoyment of property is to begin or end may be determined by computation, or be made to depend on events. In the latter case, the enjoyment is said to be upon condition.

C. C. 1434.

An obligation is conditional, when the rights or duties of any party thereto depend upon the occurrence of an uncertain event.

C. C. 1110.

An instrument purporting to be a grant of real property, to take effect upon condition precedent, passes the estate upon the performance of the condition.

C. C. 695.

A future interest is contingent, whilst the person in whom, or the event upon which, it is limited to take effect remains uncertain.

C. C. 1436.

A condition precedent is one which is to be performed before some right dependent thereon accrues.

C. C. 778.

A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder is to be deemed a conditional limitation.

C. C. 773.

Remainders, Future and Contingent Estates, how created. Subject to the rules of this title, and of part one of this division, . . . a fee may be limited on a fee, upon a

> contingency, which, if it should occur, must happen within the period prescribed in this title.

Harder v. Matthews, 309 Ill. 548, 557; Barry v. All Persons, 158 Cal. 435, 111 Pac. 249.

The first deed of trust was delivered upon June 17th, 1930, and the note would not become due until June, 17th, 1931. (Trans. 21-22, Par. II.) Lachman, through its dummy Anderson, instituted execution proceedings on its second deed of trust upon February 20th, 1931. (Trans. 14, Par. X.) At that time the fee title in the two pieces of property covered by both trust deeds was in the first trustee, and the second trustee's interest could not "take effect" prior to the termination of that estate. To repeat:

C. C. 1110.

> An instrument purporting to be a grant of real property, to take effect upon condition precedent, passes the estate upon the performance of the condition.

Mesick v. Sunderland, 6 Cal. 297, 315.

The first trust deed has never been executed or the obligation for which it is security paid or otherwise discharged. (Trans. 21, Par. II.)

It will therefore be seen that although Lachman's *cause* of action which is based upon matters of fact, had accrued by the maturity of Davidow's $25,000 note, the *right* of action, which is founded upon matter of law, could not become vested as long as the first deed of trust remained executory. In this connection, it should be remembered that a beneficiary, under the California trust deed law, must first exhaust his security before he may

hold the maker of the note personally. See Bank of Italy vs. Bentley, 217 Cal. 644, where the State Supreme Court says, on page 658:

> Considering all these factors, and particularly the anomalous nature of deeds of trust in this state, it must be held that, either by reason of implied agreement or by reason of public policy, the holder of a note secured by a deed of trust must first exhaust the security before resorting to the personal liability of the trustor.

It is said in 1 Bancroft's Code Practice and Remedies, 330, Sec. 214:

> If there is no right of vindication, or restoration, or recovery for a liability except upon some condition precedent, such condition goes, not to the remedy merely, but to the cause of action itself, and until performance of the condition no cause of action exists.

The author has used the term *cause of action* in the same sense as we used *right of action, supra.*

Neither Anderson's nor the second trustee's right (or cause) of action having matured, their attempted execution of appellant's second trust deed was premature and the deed of the trustee to Anderson passed no interest or estate in equity, and Anderson's deed to Lachman amounted to nought. The second trustee has never had a vested interest in the property. To repeat:

C. C. 695.

> A future interest is contingent, whilst the person in whom, or the event upon which, it is limited to take effect remains uncertain.

Morse v. Steele, 132 Cal. 456; 64 P. 690.

It was said by Judge Chipman, in Estate of Washburn, 11 Cal. App. 735, on page 740:

> The broad distinction between vested and contingent remainders is this: In the first, there is some person *in esse* known and ascertained, who, by the will or deed creating the estate, is to take and enjoy the estate upon the expiration of the existing particular estate, and whose *right* to such remainder no contingency can defeat. In the second, it depends upon the happening of a contingent event whether the estate limited as a remainder shall ever take effect at all. It may never happen, or it may not happen until after the particular estate upon which it depends shall have been terminated, so that the estate in remainder will never take effect. (2 Washburn on Real Property, Sec. 1332.)

And on page 741 he says, further:

> In all cases it is the intention, expressed in the instrument creating the expectant estate, that is to govern, and, therefore, if the language employed shows an intention to postpone the vesting until the happening of a certain event, it is contingent. (24 Am. & Eng. Ency. of Law, 2nd ed., p. 392, and cases noted.)

See, also, Taylor v. McCowan, 154 Cal. 798, p. 804, and cases cited. In the case before us, the deed of trust expressly recites that it is "subordinate" to the first deed of trust. (Trans. 39, Sec. SIX.) The word "subordinate" means (Century Dictionary):

> 1. In a lower order or class; occupying a lower position in a descending scale; secondary.

The uncertainty of Davidow's obligation to Bank of America of California being paid or otherwise discharged other than by an execution of the first deed of trust certainly made the estate of the second trustee in the properties contingent. For this reason the second trustee was at no time vested with any interest or estate *in presenti* in the properties it endeavored to execute upon.

Nevertheless, the deed of the second trustee to Anderson, and Anderson's deed to Lachman passed the contingent legal title in remainder to both properties.

Savings & L. Soc. v. Deering, 66 Cal. 281, 286. 287.

To avoid repetition, this subject will be concluded under the following sub-head.

(3) THE SECOND CAUSE OF ACTION

We have hereinbefore shown that Lachman acquired no interest whatsoever in either of the properties involved herein by its execution of the second deed of trust. Had Lachman's unlawful actions regarding these properties stopped after the deed of Anderson to it, appellant would have no cause of action against the parties interested in the first deed of trust. But since Lachman's avarice and desire to acquire the whole of appellant's interest in these properties overcame its caution to abide by legal principles, these parties are necessarily brought in to adjudicate appellant's complete rights in and to his said properties and to quiet his title to them. Having participated in Lachman's ill-gotten gains, the Bank became a party to Lachman's fraudulent conversion of appellant's property.

Bahen v. Furley, 44 Cal. App. 134, 136 (1).

We next find this Investment Corporation illegally negotiating with the beneficiary under the first deed of trust to illegally cause to be released to it the Napa County estate of appellant, the legal title to which was reposed in its trustee under the first deed of trust conveyance.

We find the temptation of the amount offered for such a

conveyance, viz: $25,000, too great for the first beneficiary to refuse. Disregarding all legal rights of appellant, we find this first beneficiary, Bank of America of California, acceding to the illegal proposal, accepting the offered consideration, $25,000, and illegally instructing its trustee Corporation of America to execute and deliver its deed to the Napa County properties to the appellee Lachman. By reason of this conveyance, we respectfully submit, appellee Lachman Bros. Investment Co. is now in possession of the entire legal title in fee to the Napa County properties, and the only way to compel a reconveyance to appellant herein is by this bill in equity.

We further submit that in order to adjudicate these questions in this equitable action it is necessary to make all the parties to the first deed of trust parties defendant herein and to have this court in this proceeding and at this time adjudge the breach of contract by the beneficiary under the first deed of trust, and to apply the legal liabilities for such breach to which the law makes said appellees subject.

The contract represented by the first deed of trust covered the two separate and distinct pieces of real property in blanket form; and, for such reason was an entire contract. When the beneficiary Bank of America of California entered into the contract with appellee Lachman for the release of part of this property without the knowledge or consent of appellant, the trustor, it thereby breached its contract with appellant and laid itself liable to the penalty for such breach as is provided under the laws of the State of California.

Not having foreclosed a lien, as it supposed, and not having obtained the legal title to the properties, as it concluded it had

when it executed its second deed of trust, nevertheless Lachman proceeded to negotiate with the Bank of America just as though Davidow was completely out of the picture. Such negotiations resulted in Lachman Bros. Investment Co. paying the Bank the sum of $25,000 on Davidow's $150,000 obligation for the release of the Napa County property from the first deed of trust which resulted in the transfer of the legal title of that property from Corporation of America, trustee, to Lachman. This transfer of title amounted to an absolute breach of trust by Corporation of America, as it was executed without the knowledge or consent of Davidow. To this breach of contract both Lachman and Bank of America of California were parties—both stand in *pari delicto*. This action of the three appellees amounted to an unlawful conspiracy to deprive (or defraud) appellant. For such wrong neither appellee Bank of America of California nor appellee Lachman can enforce its obligation against either the primary debtor, the properties, nor against appellant Davidow, personally, their secondary debtor, or surety.

Bank of Italy v. Bentley, (*supra*);

C. C. 2844.

> Surety has Rights of Guarantor. A surety has all the rights of a guarantor, whether he become personally responsible or not.

C. C. 2819.

> What dealings with Debtor exonerates Guarantor. A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor, without the consent of the guarantor, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal, in respect thereto, in any way impaired or suspended.

Crisman v. Laterman, 149 Cal. 647, and cases cited p 651; C. C. 2840; C. C. 2850.

Supported by abundant authority, the text in 27 Am. & Eng. Ency. of Law (2d Ed.) 255 reads:

> One who advances money to pay the debt of another, in the absence of agreement, express or emplied, for subrogation, will not be entitled to succeed to the rights and remedies of the creditor so paid unless there is some obligation, interest or right, legal or equitable, on the part of such person in respect of the matter concerning which the advance is made, as otherwise he is a stranger, a volunteer, an intermedler, to whom the equitable right of subrogation is never accorded.

See also, Brown v. Rouse, 125 Cal. 645, 651; 58 P. 267.

Let us examine, first, the effect of this breach of Davidow's first deed of trust upon his $150,000 note obligation.

When the Bank received the $25,000 from Lachman it instructed the trustee, Corporation of America, to release to Lachman the Napa County property, which the latter thereupon did. This left only the San Francisco property subject to the deed of trust. By this instruction the Bank, as Davidow's creditor, thus put it out of the power of the trustee to execute its trust, either by reconveyance to Davidow in the event of payment of the obligation or by sale of the property upon default. (It should here be noted that both trust deeds covered both pieces of property in blanket form.) The penalty provided by statute for such a wrong is found in Civ. Code 1512, which reads as follows:

1512. EFFECT OF PREVENTION OF PERFOR-

> MANCE. If the performance of an obligation be prevented by the creditor, the debtor is entitled to all the benefits which he would have obtained if it had been performed by both parties.

Houghton v. Steele, 58 Cal. 421; 9 Cal. Jur. 348, Sec. 203.

Which means, in the case before us, that Davidow is entitled to have the court regard the $150,000 obligation paid and direct the trustee to convey the legal title of record to him. The rule in such cases is thus stated by the California Supreme Court:

> If one voluntarily puts it out of his power to do what he has agreed, he breaks his contract, and is immediately liable for the breach, without demand, even though the time specified for performance has not expired. (Bishop on Contracts Sec. 1426.)

Such is the text from *Bishop on Contracts,* quoted in Wolf v. Marsh, 54 Cal. 228, opinion by Mr. Justice Sharpsteen, and again in the case of Poirier v. Gravel, 88 Cal. 79. The third syllabus in Dunn v. Daly, 78 Cal. 640, reads:

> When an entire contract is broken by one party, it is optional with the other party to refuse to go on with the contract thereafter.

For other cases in point, see:

> 1 Re-Statement of the Law of Contracts, 468, Sec. 315; Underhill on Trusts and Tr'ees, Am. Ed. p. 453; (same) 8th Ed. Art. 91 p. 478; Art 101 p. 515; Cowper v. Stoneham, 68 The Law Times, 18 (1893); Lovell v. Ins. Co., 111 U. S. 264; 28 L. Ed. 423; Robertson v. Bd. of Com., (Kan.) 113 Pac. 413; Saar v. Weeks, (Wash.) 178 Pac. 819; Johnson v. Knappe, (S. D.) 123 N. W. 857;

Also the following California cases:

> Twomey v. Peoples Ice Co., 66 Cal. 233; 5 Pac. 158; Haskell v. McHenry, 4 Cal. 411; McConnell v. Corona Co., 149 Cal. 60, pp. 64-5; Alderson v. Houston, 154 Cal. 1; 96 Pac. 884; DeProsse v. Royal Eagle, 135 Cal. 408; 67 Pac. 502; Central Oil Co. v. So. Ref. Co., 154 Cal. 156; Ratzlaff v. Trainer—D. Co., 41 Cal. App. 586, 591.

Defendants contend that in as much as the trustee executed the deed of release to "whom-so-ever is entitled thereto," or words to that effect, that they are not liable as for a breach. This is a mere quibble. Lachman paid the $25,000 consideration for the release, the Bank accepted the same and instructed the trustee to realease the property to Lachman. The Complaint shows that this deed of partial release was filed for record at the request of defendant Lachman Bros. Investment Co. If an error was made by the trustee in naming the grantee in the deed, the defendants are surely estopped from denying their own wrong. It was the intention of all three appellees to release the legal title to this property to Lachman Bro.'s Investment Co.

Bank of America cannot consistently urge that it did not know that Lachman was not the legal owner of these properties. If they took Lachman's word that he was such legal owner and failed to examine into the execution record and apply the law and draw their own conclusions, they were guilty of gross negligence and must now suffer for their own carelessness. Davidow is the sole innocent party and the victim of the ignorance or carelessness of defendant Bank of America of California. The general rule governing such stupidity, if we may be allowed to use the expression, is thus stated by the

California Supreme Court in the case of Wittenbrock v. Parker, 102 Cal. 93, p. 105:

> The case presented is this: Plaintiff and Bithell are both innocent parties. Plaintiff had a prior mortgage which he by mistake satisfied in full without reading the satisfaction. This was negligence on his part, and as one of two innocent parties must suffer as a consequence of such negligence, it is equitable and just that the loss should fall upon the plaintiff by whose negligence the mishap was brought about. (Schultz v. McLean, 93 Cal. 356; Somes v. Brewer, 2 Pick. 201; 13 Am. Dec. 406; Mundorf v. Wickersham, 63 Pa. St. 87; 3 Am. Rep. 531; Civ. Code S. 3543).

For other cases in point, see Note, 5 L. R. A., N. S. 799.

Secondly, let us enquire into Lachman Bros. Inv. Co.'s position under the circumstances disclosed: Lachman's participation in the breach of the first deed of trust puts that corporation in the same relative position, with reference to the legal penalties to be imposed, as its co-tort-feasor, Bank of America of California.

Lachman was in *pari delicto* with the Bank in this breach of trust, a contract to which it was neither a party nor to which it was privy. By this breach of contract Lachman became vested with the legal title to the Napa County property without the knowledge or consent of Davidow, the trustor under that deed of trust. Lachman by reason of its wrongful act has now become the trustee *de son tort* for Davidow, and must account to Davidow for the rents and profits and convey to Davidow the legal title.

Mr. Justice Olney, in Brazil v. Silva, 181 Cal. 490, on page 494, says:

> Now it is to be noted that the opinion quoted does not controvert, as it could not well do, the general principle upon which relief is asked for in such cases as the present, namely, that where the defendant has, by his own wrong obtained the legal title to property, a trust as to such property will be imposed upon him in favor of the party injured. This principle is a familiar one and is based upon the maxim, which has been carried into our code (Civ. Code, sec. 3517), that no one may profit by his own wrong. The instances of its application are as various nearly as the ways in which property can be wrongfully acquired. A most common illustration is the imposition of a trust upon a party holding under a deed fraudulently obtained from the grantor, where admittedly the deed is valid to the extent of conveying the legal title.

This same doctrine is further expounded by Mr. Justice Richards in England v. Winslow, 196 Cal. 260, page 267, where that eminent jurist in part says:

> (3) One who has assumed the relation and undertaken to act in the capacity of a trustee and who has thereby come into the possession and control of the money or property of another cannot be heard to deny the validity of the trust under which he has admittedly acted and the benefits of which he has received and holds.

And a little further on, quoting from a New York case:

> "It is a well settled rule in the law of trusts that if a person not being in fact a trustee acts as such by mistake or intentionally, he thereby becomes a trustee *de son tort*. The rule is thus laid down by a recent writer: 'A person may become a trustee by construction, by intermedling with and assuming the management of property without authority. Such persons are trustees *de son tort* as persons who assume to deal with a deceased person's estate without authority are administrators *de son tort*.—During the possession and management by such constructive trustees they are subject to the same rules and remedies as other

> trustees.' . . . It is plain that this branch of the law does not rest on the strict ground of estoppel as usually expounded in the law books. It rather depends upon a principle of public policy connected with the right administration of justice (1 Greenl, on Ev. Sec. 210.) The principle to be extracted from the cases is that the party acting as trustee shall not be allowed, in a court of justice, to set up, as against parties interested in the administration of the trust, a state of things inconsistent with his assumed character."

Lachman, through its dummy, Anderson, executed the Anderson second deed of trust. It was therefore in possession of all the facts regarding the same. When it paid Bank of America of California the $25,000 for the release of the Napa County lands from the first deed of trust, which we have shown it had no legal right to do, it was laboring under a mistake of law. Such payment to the Bank was, in the eyes of the law, a voluntary payment. Such payment cannot be recovered. The following cases are uniform to this effect and the rule is universal. This payment was made by Lachman on Davidow's obligation. The Bank now has and retains this money. However, the Bank having come into this money by reason of its own wrong—by reason of its own breach of contract—it cannot retain the same. Otherwise, it would be taking advantage of its own wrong. (Civ. Code 3517.) We respectfully submit that Davidow is entitled to judgment against the appellee Bank of America of California and its successor, appellee Bank of America National Trust and Savings Association, for this money. It was paid on Davidow's obligation and is legally his money. The following cases sustain our contention: The general rule is thus restated in Taylor v. First Nat. Bank, 212 Fed. 898, p. 902:

As Mr. Justice Bradley said in Lamborn v. County Commissioners, 97 U. S. 181, 185 (24 L. Ed. 926): "A voluntary payment, made with a full knowledge of all the facts and circumstances of the case, though made under a mistaken view of the law, cannot be revoked, and money so paid cannot be recovered back."

Brown v. Rouse, 125 Cal. 645, 651; Harrison v. Barrett, 99 Cal. 607, p. 611; 34 P. 342; Leahy v. Warden, 163 Cal. 178; Burke v. Gould, 105 Cal. 277, p. 283; Hanford Gas. Co. v. Hanford, 163 Cal. 108, p. 112; First Nat. Bank v. Thompson, 212 Cal. 388; Still v. Saunders, 8 Cal. 281, p. 287; Smith v. McDougal, 2 Cal. 586; Brumagim v. Tillinghast, 18 Cal. 265; Garrison v. Tillinghast, 18 Cal. 404; 21 R. C. L. p. 173, Secs. 203, 204, title "Payment" 53 A. L. R. p. 949, Note.

If the Bank could authorize the trustee to release one piece of property from its obligation under the first deed of trust for $25,000 without going through the formality of a public sale, it could release the other piece in the same manner and for the same consideration, $25,000, and then bring suit against Davidow for the $100,000 deficiency. Does such a self evident absurdity need argument?

As we have hereinbefore shown, the property conveyed as security by deed of trust is the primary debtor; that when the primary debtor has been released without fault on the part of the secondary debtor—the maker of the note—the latter, being regarded as the surety, is thereby released from his obligation. (Bank of Italy v. Bentley, supra). For this reason Davidow is entitled to a permanent injunction against the Bank enjoining it from bringing action against him upon his note.

Cresman v. Laterman, 149 Cal. 647, 651.

By Lachman's wrongful participation in the breach of the first deed of trust, Davidow is now entitled to have the legal

title to the Napa County property conveyed to him by the Lachman corporation. When that conveyance shall have been made the contingent remainder estate upon which the second trust depended for its security will be merged with the balance of the legal title in Davidow. In other words, Lachman's primary security, through its own wrong, will be extinct. From what we have before shown, Lachman, by its own fault, having extinguished its primary debtor, has automatically discharged the surety on the note—Davidow.

We will go further into this subject under our next subdivision.

(4) LEGAL EFFECT OF LACHMAN'S FRAUDULENT ACTS

The allegations in the bill regarding Lachman's deceit and fraudulent practices in its illegal attempts to confiscate the properties of appellant were not injected for the purpose of merely embellishing appellant's causes of action. These fraudulent practices started when Lachman deliberately breached its two promises to renew its loan. These promises were both based upon valuable considerations.

Weinstein v. Moers, 207 Cal. 534, 542.

Right here we might say that it is the unwritten custom between borrower and lender of these large sums upon real estate security to renew the same when due as long as the security is good and its income pays interest, taxes, etc. If this were not so, the banks which lend these large sums upon only one year obligations would soon own all the real property, or practically all, in their immediate vicinity. Of these facts the courts will take judicial knowledge. The Lachman loan under the second

trust deed was upon a six months' note at twelve per cent. In itself an evidence of greed.

The next fraudulent and deceitful act practiced by Lachman was its execution of its second deed of trust before it had any right so to do.

Its third fraudulent act in this process of illegal confiscation consisted in its wrongful negotiation with appellee Bank of America resulting in the legal title to the Napa County properties being transferred for the sum of $25,000.

Let us examine into the legal aspects of these two last mentioned fraudulent transactions.

It is appellant's contention that when Lachman induced the second trustee to breach its trust by executing the second deed of trust, and by such breach of trust itself assuming to become the holder of the legal title to the properties, it thereby terminated the trust and in so doing breached its contract with appellant. By its voluntary act it is now estopped to deny such termination. For all of which it is now liable to such penalties as are provided by the laws of the State of California.

When Davidow delivered his second deed of trust he reserved unto himself two separate and distinct rights: The first was his right to pay off his $25,000 obligation and have the properties re-conveyed by the trustee; the second was his right to compel the beneficiary to first look to the property for its reimbursement. Bank of Italy v. Bentley, supra.

When Lachman illegally caused its second deed of trust to be executed before its right to do so had accrued, it thereby

made it impossible for appellant, the trustor, to either pay off his obligation and have the properties re-conveyed by his trustee, or to compel the trustee to sell the securities for the purpose of satisfying his obligation.

There are certain California statutory rules of law which are applicable to this state of facts: The first is:

C. C. 870.

> Where a trust in relation to real property is expressed in the instrument creating the estate every transfer or other act of the trustees, in contravention of the trust, is absolutely void.

And also:

C. C. 2244.

> One who actually and in good faith transfers any money or other property to a trustee, as such, is not bound to see to the application thereof, and his rights can in no way be prejudiced by a mis-application thereof by the trustee.

And also:

C. C. 2224.

> One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.

And also:

C. C. 2223.

> One who wrongfully detains a thing is an involuntary trustee thereof for the benefit of the owner.

We respectfully submit that Davidow, appellant here, the innocent victim of these grasping, fraudulent acts of Lachman's,

is the only one who can take advantage of these laws. The deed of the second trustee to Anderson, being in contravention of the trust reposed in it by Davidow, is absolutely void, in-so-far as appellant is concerned. Lachman, on the other hand, being the perpetrator of this fraud and thereby being also guilty of breach of contract, cannot now hide behind this statute. Lachman is estopped to plead the illegality of the trustee's deed. By its execution Lachman has extinguished the trust at law and is bound by this action here. This statute was not intended to be a shield for fraud, deceit and illegal actions. Mr. Justice Olney, in Brazil v. Silva, 181 Cal. 490, on page 495, says:

> But the position so taken is not sound. It is in fact directly contrary to the established rule of equity. It is a familiar function of equity and one very characteristic of its peculiar province, to refuse to permit and affirmatively to prevent, a statute being used as a means whereby to perpetrate a wrong.

England v. Winslow, 196 Cal. 260, 272 (7).

Lachman's breach of contract consisted in its execution of the second deed of trust and its instruction to the second trustee to proceed with the sale and execution of its deed, thereby breaching the trust reposed in it by the trustor, Davidow. That such action on the part of Lachman amounted to a breach of contract is thus stated in 1 Re-Statement of the Law of Contracts 468, Sec. 315, as follows:

> Breach by Preventing or Hindering Performance by the Other Party.
>
> (1) Prevention or hinderance by a party to a contract of any occurrence or performance requisite under the contract for the creation or continuance of a right in favor of the other party, or the discharge of a duty by him, is a breach of contract.

Wolf v. Marsh, 54 Cal. 228, 232.

Lachman, by its illegal execution of the second deed of trust through its dummy beneficiary and the trustee, thereby prevented Davidow from discharging his duty of paying off his obligation or insisting upon a sale of the properties by the trustee under the trust. Lachman became the holder of the legal title to the contigent estate through its own wrong, thereby extinguishing the trust at law. Davidow can now obtain his rights in equity only.

C. C. 2279.

> A trust is extinguished by the entire fulfillment of its object, or by such object becoming impossible or unlawful.

C. C. 871.

> When the purpose for which an express trust was created ceases, the estate of the trustee also ceases.

C. C. 2223.

> One who wrongfully detains a thing is a voluntary trustee thereof for the benefit of the owner.

As we have before shown, Davidow was not in default under either of his deeds of trust at the time the second trust deed was executed.

Let us repeat the statutory law governing the liability for such breach and prevention of performance. It is:

C. C. 1512.

> Effect of Prevention of Performance. If the performance of an obligation be prevented by the creditor the debtor is entitled to all the benefits which he would have obtained if it had been performed by both parties.

No interpretation is necessary to decipher the meaning of

this perspicuous statute. Davidow in this action is entitled to a decree annulling and voiding his second deed of trust and promissory note and to have them surrendered up for cancellation under C. C. 3412.

So much for appellee Lachman's fraudulent acts in-so-far as the second deed of trust herein involved is concerned.

Let us next look into the legal effect of Lachman's fraudulent and illegal attempts at confiscation as they affect appellant's first deed of trust:

As we have shown, when Lachman instituted its negotiations with the Bank for a conveyance from the first trustee of the legal title to the Napa County properties for a consideration of $25,000, it had no right, title, estate or interest in either of said properties except that it was the holder of the legal title of the remainder estate as a trustee *de son tort* for Davidow. When, therefore, it instituted these illegal negotiations it became an intermeddler in a contract to which it was neither a party nor to which it was privy. Such an intermeddler has no standing in the eyes of the law and can acquire no interest whatsoever by subrogation in equity or otherwise to the property conveyed, but becomes merely a trustee *de son tort* of the legal title for the equitable owner.

Let us next inquire into the legal effect this illegal transaction has had upon the rights of the beneficiary under the first deed of trust, the appellee Bank of America.

When this first beneficiary induced Davidow's trustee, Corporation of America, to execute and deliver to appellee Lachman its deed to the Napa County properties it not only put it

out of the power of the trustee to execute the trust reposed in it by Davidow, which in itself amounted to a breach of contract, but it also breached an entire contract by causing to be conveyed one of the two pieces of property covered in blanket form by the trust deed. By this double breach of contract it has now made itself liable to the same penalties hereinbefore referred to and cited regarding the breach of contract and prevention of performance by Lachman under the second deed of trust. So that now, under those same rules of law, this appellant is entitled to a cancellation of both his first deed of trust and his notes evidencing his $150,000 obligation, and to the surrender for cancellation of both of those instruments. Having participated in the fruits of Lachman's fraud, the Bank has become a party thereto.

Bahen v. Furley, 44 Cal. App. 134, 136 (1).

There is still another view to be taken of this illegal breaching of the first trust agreement. Lachman was a party to that breach, and actually participated in it. By reason of such wrong Lachman has made it impossible for the first trustee to execute its trust. By reason of such prevention, the contingency upon which the estate of the second trustee depended has been made impossible of performance. That is, Davidow has been prevented from paying off his obligation. The principal having been discharged by Lachman's own wrongful act, the surety—Davidow—is also discharged from his personal obligation under his second deed of trust.

9 Cal. Jur. 348, Sec. 203; Houghton v. Steele, 58 Cal. 421.

(5) THE FEDERAL QUESTIONS INVOLVED

The two Federal questions to be raised are governed by the same principles of law. They involve two separate statutes so will be discussed separately. They are both founded upon appellant's constitutional rights under the XIV Amendment to the Federal Constitution.

(A) The first one which we will discuss has to do with the construction placed upon Section 2924 of the California Civil Code by appellees in their execution of appellant's second deed of trust.

(B) The second question has to do with the construction placed upon Section 692 of the California Civil Code of Procedure by appellees in the same proceeding.

(A) It is almost impossible to decipher the real meaning of C. C. 2924 as it appears in the Code. For that reason we have stripped the section of its unnecessary verbiage. In its naked form it reads as follows:

C. C. 2924.

> Where, in any transfer in trust of *any estate* in real property to secure the performance of an obligation, a power of sale is conferred upon the trustee to be exercised after a breach of the obligation for which such transfer is a security, such power shall not be exercised until (a) the trustee or beneficiary shall first file for record in the office of the recorder of the county wherein the *trust property* is situated a notice identifying the deed of trust and giving the book and page where the same is recorded or a description of the *trust property* and containing a statement that a breach of the obligation for which such transfer in trust is security has occurred, and of his election to sell or cause to be sold *such property* to satisfy the obligation; (b) not

> less than three months shall thereafter elapse; and (c) the trustee shall give notice of the time and place *thereof* in the manner and for a time not less than that required by law for sales of real property upon execution.

We wish to particularly call to the attention of the court the express wording of the act: When *any estate* in real property is conveyed in trust as security for a loan, upon breach of the obligation the trustee is *authorized to sell the whole trust property*—not merely the estate therein conveyed in trust.

The case now before this court is an excellent example to illustrate the unconstitutionality of this law as construed by appellees.

The estate granted the second trustee by the delivery of the second deed of trust was a conditional contingent remainder. However, it was an "estate in real property" within the meaning of this law, although not a vested estate. (C. C. 769.)

Relying upon this legislative authorization Lachman, through its dummy Anderson, proceeded to sell the trust property to which it had no title or right at that time. Let us look at the recitals of the trustee in its deed of conveyance to Anderson, "Exhibit C," (Trans. 41).

> (b) Said G. P. Anderson has recorded in the office of the City Recorder, etc., etc., notices of such breach and of election to sell, or cause to be sold, *said property* to satisfy said obligation.
>
> (c) Not less than three months elapsed between the recordation of said notices of breach and the posting and first publication of the *notice of sale of said property.*
>
> (d) Said Beneficiary has made due and proper demand upon said Trustee *to make sale of said property* pursuant

to the terms of said Deeds of Trust.

(e) Said Trustee has given notice of the time and place of the said sale *of said property,* etc.

(f) Said *sale of the property* situated in the City and County of San Francisco, State of California, *herein before described,* was made by said Trustee at public auction in the City and County etc., etc., IN FULL COMPLIANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, ETC., ETC.

So, *in full compliance with the laws of the State of California,* this Trustee sold the appellant's property, outside any court proceeding, to which it had no present vested right, title, estate or interest, without the owner's consent, without any notice to him, and without any opportunity given him to protect his rights.

This trustee was undoubtedly laboring under the impression that it was acting under a POWER OF ATTORNEY embraced in the deed of trust and could, as attorney-in-fact for Davidow, transfer the fee simple from Davidow to the purchaser at its sale. However, neither Davidow nor this trustee was possessed of that title, as we have before shown.

We do not contend at this time that Civil Code Section 2924 is unconstitutional as enacted. We do, however, most strenuously contend that as construed by this second trustee it is clearly unconstitutional. Construed as applicable to second deeds of trust, that is while a first trust deed is outstanding, this enactment amounts to an authorization by the state legislature of the taking of one man's property and giving it to another without "due process of law" as forbidden by section 1, of XIV Amendment to the Federal Constitution. As followed

by the trustee in the execution herein involved, it resolves itself into a proceeding in which the state has authorized Title Insurance & Guaranty Co., trustee, to give notice of the sale of appellant's properties, of which it was neither possessed nor authorized, legally, to sell, and then to sell and execute a conveyance to the "purchaser". In short, it is an authorization by the state legislature of the sale of one's property by another who has no legal right so to do.

If Lachman had no right, or cause of action at the time his dummy instituted her execution proceedings, and by reason thereof it obtained no valid title to the properties, just what were this beneficiary's, Lachman's, legal rights—the premises considered?

Among other provisions, the second deed of trust provided, in paragraph ONE, section (b): The trustor agrees to pay all obligations affecting the properties *when due.* (Trans 34.) In paragraph TWO (Trans. 35) the trustee or beneficiary may pay any such obligation upon the failure of trustor to do so. As the obligation under the first trust deed at that time had not matured, neither party could have paid the same under these provisions.

It was Anderson's legal duty to await the maturity of the $150,000 obligation to Bank of America of California; in the event Appellant failed to meet the same promptly, to have served notice upon him to pay the same; in the event of his failure so to do within a reasonable time, to have paid the same and then to have instituted her execution proceedings upon the second deed of trust. In other words, if the trustor failed to remove the contingency upon which her estate depended, it was

her duty to remove the same under the terms of her own agreement. Otherwise, she had no legal right to execute her contract by selling the trust properties.

Lachman is now estopped to deny that this law was not intended to apply to second deeds of trust, as its dummy Anderson elected to execute the Lachman deed of trust under its authority and strictly following its procedural dictates. Her trustee recites in its deed of conveyance to her that it proceeded in its execution of the trust "IN FULL COMPLIANCE WITH THE LAWS OF CALIFORNIA." These were the only "laws" covering her "right" to execute her trust.

This construction put upon C. C. 2924 by both the beneficiary Anderson and the trustee, Title Insurance & Guaranty Company, brings their proceedings under C. C. 2924 squarely within the decisions of the Supreme Court of the United States commented upon and quoted by the author in 1 Willoughby on the Constitution of the United States, second edition, 1928, Secs. 11 and 12, page 15.

As the law governing the point we have just raised also covers the following Federal Question, we here refer to the authorities there cited to avoid repetition.

(B) In the execution of a deed of trust the notice of sale is jurisdictional. If the notice of sale has not been given strictly in accordance with the provisions of the law, the trustee acquires no right to sell the properties. In its attempted execution of the second deed of trust the trustee, Title Insurance & Guaranty Co., in construing Section 692 of the Code of Civil Procedure, misconstrued that section. Its notice of sale was so

defective as to be no notice at all; and its deed to the premises, based upon such notice, has deprived this appellant of his said properties without due process of law as guaranteed by the XIV Amendment to the Federal Constitution. These facts are alleged in paragraph XIII of the Bill of Complaint, (Trans. 17.)

The property covered in the deed of trust consisted of two parcels situated in different counties; and, in reference thereto, was but one subject of an entire contract. That is what is meant herein when we say that the properties were covered "in blanket form." The trustee gave separate notices of sale. The trustee was not authorized to divide the contract. The beneficiary's notice of election to sell the property, recorded in each county, stated that she elected to "sell the property." Such notice did not authorize her trustee to give separate notices of sale. Her contract, "Exhibit B" of the bill, provided: "It (the trustee) shall first give notice of the time and place of such sale in the manner provided by the laws of this state in force at the time of giving such notice . . . " (Trans. 37.) That law was C. C. P. 692 as it read prior to its 1931 amendment. In paragraph 3 of that section it is provided that in case of the sale of real property the notice shall be given by the posting of a notice "*particularly describing the property,*" which notice shall also be published in a newspaper printed and published in the city where the property is situate.

The trustee construed this law as authorizing it to give separate notice for each parcel. Such construction, we contend, deprived this appellant of his property without due process of law.

The execution of a deed of trust is a proceeding outside a court of justice. Such a proceeding is as strictly bound by

rules of procedure as is a similar proceeding in a court of law. There was but one deed of trust; there was but one security; the trustee was authorized to give but one notice of sale. That notice, to be legal, could only describe both parcels. The notice of sale was jurisdictional. The trustee could not lawfully sell until it acquired jurisdiction so to do. The notice was the summons—the original process—and until properly served the trustee was powerless to deliver title. The trustee was not authorized to deal with this property prior to the sale otherwise than as an entity. After acquiring jurisdiction to sell, as the contract, as well as the law, provided, it not only could, but was obliged to, sell in separate parcels. The San Francisco property was sold upon a notice which described that property only. That notice did not authorize its sale and the trustee's deed based upon that notice was void. The same is also true of the Napa County property. (Trans. 16.) This point, alone, will confer jurisdiction upon the Federal courts to accept and retain jurisdiction of this case.

> 3 Jones on Mortgages (8th Ed.) Secs. 2361, 2393-4, pp. 1852-3. Fowle v. Merrill, 92 Mass. 350; Smith v. Provin, 86 Mass. 516; Donohue v. Chase, 130 Mass. 137, 138; Torry v. Cook, 116 Mass. 163, 165; Burnett v. Denniston, 5 John. Ch. (N. Y.) 35; Fenner v. Tucker, 6 R. I. 551; Shillaber v. Robinson, 97 U. S. 68; 24 Law Ed. 967; Bigler v. Waller, 14 Wall (U. S.) 297; 20 Law Ed. 891; Winbigler v. Sherman, 175 Cal. 270; 272; Higbee v. Chadwick, (C. C. A. 6) 220 Fed. 873, 875 (5).

We respectfully submit that this construction placed upon C. C. P. 692 has deprived this appellant of his property without due process of law. That the sale under the construction placed upon this statute has been a "taking" by authority of the laws of the State of California.

(C) Civil Code Section 2924 is void upon its face, and for such reason appellant has been deprived of his property without due process of law as guaranteed by the Federal Constitution, Amendment XIV. The Bill of Complaint alleges this ground of Federal jurisdiction in its XIV paragraph. (Trans. 18.)

Section 24, of Article IV of the state constitution provides:

> Every act shall embrace but one subject, which shall be expressed in its title. xx

Section 22, of Article I, of the same constitution provides:

> The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

The unconstitutionality of this section of the Civil Code was created by the act of the 1917 legislature which re-enacted the section under the title: "An act to amend section 2924 of the Civil Code, relating to mortgages and deeds of trust." (Laws 1917, p. 300.)

(1) In the first place, this 1917 law was *not* an amendment of the section. The section was re-enacted verbatim and the unconstitutional features added.

(2) This section, prior to this "amendment", did not relate to "mortgages and deeds of trust", as the title recites, but only to mortgages.

(3) There are clearly two subjects contained in this 1917 so-called amendment, viz., (a) a procedural act relating to the foreclosure of mortgages containing a power of sale, and (b) a

procedural act relating to the execution of deeds of trust. The subject of mortgages does not include the subject of deeds of trust. The converse is also true. Under this act we find a mandatory provision, a provision which, if not complied with, will void all executions of deeds of trust, under the title "Lien", subtitle "Mortgage". The subject of trusts is under the title "Trusts", and is found in sections 2215 - 2289 of the Civil Code.

The reason for the constitutional provision is well illustrated in the title of the act: "relating to mortgages and deeds of trust". Under such a general title the legislature could include any matter relating to the two subjects mentioned.

In Lewis v. Dunne, 134 Cal. 291, the state supreme court, on page 295, says:

> The word "subject" is used in the constitution in its ordinary sense; and when it says that an act shall embrace but "one subject", it necessarily implies—what everybody knows—that there are numerous subjects of legislation, and declares that only one of these subjects shall be embraced in any one act. All subjects cannot be conjured into one subject by the mere magic of a word in a title.

We respectfully submit, that when appellees endeavored to execute appellant's second deed of trust under the provisions of this section, and under such proceedings took possession of his property and collected the rentals therefrom, that they thereby deprived him of his said property without due process of law, since the said section was void and of no force or effect for any purpose.

Wofford Oil Co v Smith, 263 Fed 396, 403(3)(4);
Resley v Utica, 173 Fed 502, 509-510;
(Both cases citing:)
Siler v Louisville & N.RR.Co, 213 US 175,

The following authorities govern the two Federal questions above discussed:

> Without the guarantee of "due process" the right to private property cannot be said to exist, in the sense in which it is known to our laws. * * * Whatever else may be uncertain about the definition of the term "due process of law" all authorities of law agree that it inhibits the taking of one man's property and giving it to another contrary to settled usages, modes of procedure, and without notice or an opportunity for a hearing."
>
> Ochoa v. Hernandez, 230 U. S. 139, 161; 57 Law Ed. 1427.
>
> It is the settled law of this court that one who would strike down a state statute as violative of the Federal Constitution must bring himself by proper averments and showing within the class as to whom the act thus attacked is unconstitutional. He must show that the alleged unconstitutional feature of the law injures him, and so operates as to deprive him of rights protected by the Federal Constitution.
>
> So. Ry. v. King, U. S. 524, 534; 54 L. Ed. 868.
>
> The proposition, if carried out in this case, would, in effect, take away one man's property and give it to another. And the deprivation would be "without due process of law." This is forbidden by the fundamental principles of the social compact, and is beyond the sphere of the legislative authority both of the states and the nation.
>
> Osborn v. Nicholson, 13 Wall (80 U. S.) 654; 20 L. Ed. 689.

The author in 1 Willoughby on the Constitution of the U. S. 2nd Ed. p. 15, Sec. 11, says:

> The question as to the constitutionality of law does not, in all cases, go to the essential validity of the law, that is, as applicable to any and all conditions, but may depend upon the particular facts to which it is sought to be applied. Thus, in Poindexter v. Greenhow, the court said:

"and it is no objection to the remedy in such cases, that the statute whose application in the particular case is sought to be restrained is not void upon its face, but is complained of only because its operation in the particular instance marks a violation of a constitutional right; for the cases are numerous, where the tax laws of a state, which in their general and proper application are perfectly valid, have been held to become void in particular cases, either as unconstitutional regulations of commerce, or as violation of contracts prohibited by the constitution, or because in some other way they operate to deprive the party complaining, of a right secured to him by the constitution of the United States." Thus, the cases are numerous in which the Supreme Court, in holding particular statutes unconstitutional, has qualified or explained this holding by declaring that the statutes "as construed and applied" are thus to be deemed unconstitutional.

See also:

1 Willoughby, Sec. 12, p. 17; Dutton Phos. Co. v. Priest, 67 Fla. 370, and cases cited on page 378; 65 So. 282. Castillo v. McConnico, 168 U. S. 680; Bellingham, etc. v. New Whatcom, 172 U. S. 314; 43 L. 460.

(6) EQUITY PRINCIPLES INVOLVED

(a) The relief herein sought is cognizable in equity only. It is universally held that a trustee's deed, regardless of its illegality, is good in law and is subject to impeachment in equity only.

Brazil v. Silva, 181 Cal. 490, 494; Convoy v. Trautman, 7 Ired, 155; Robinson v. Pierce, 118 Ala. 273; Shortz v. Unangast, 3 Watts & S. 55; 1 Perry on Trusts, Secs. 321, 334; Hill on Trustees, 778; 26 R. C. L. 1299 Sec. 151; Scott v. Sierra Lbr. Co., 67 Cal. 71, 75; Schlessinger v. Mallard, 70 Cal. 326, 334.

In this last case it was said:

> "This is an action in equity against the trustees charging both a breach and a completion of the trust, and seeking for either or both of such causes to compel him to convey the title, for the want of which it was held the plaintiff could not recover in the action of ejectment."

(b) A court of equity assuming jurisdiction for one purpose will retain it for all purposes.

This court, acquiring jurisdiction to compel Lachman to reconvey the legal title to Davidow, will adjudicate the voluntary payment of the $25,000 from Lachman to the Bank and also the breach of contract and trust upon the part of the appellees Bank and Corporation of America.

Havemeyer v. Sup. Ct., 84 Cal. 327, 395, 18 ASR 192, 10 LRA627.

Hartford Ac. etc. v. So. Pac. Co., 273 U. S. 207, 217; 71 L. Ed. 612.

U. S. v. U. P. Ry. Co., 160 U. S. 1, 50-52; 40 L. Ed. 319; 16 S. Ct. 190.

McGowan v. Parish, 237 U. S. 285, 291-292.

(c) Equity follows the law.

Under the Federal equity principles where the facts in the case are governed by direct statutory provisions a court of equity must apply such statutory rules and is not authorized to depart from them.

The facts in the instant case are practically all governed by

the written law of California. This court sitting as a Federal equity court is bound by these statutes and cannot disregard them. This rule of law as annunciated by Judge Story is thus quoted in the case of Nu-Grape Bottling Co. v. Comati, 40 Fed. 2d, 187, 189:

> "Where a rule, either of the common or of the statute law, is direct, and governs the case with all its circumstances, or the particular point, a court of equity is as much bound by it as a court of law, and can as little justify a departure from it." Story's Jurispr. (11th Ed.) Vol. 1, Sec. 64. Also Pomeroy's Equity Jurisprudence (4th Ed.) Vol. 1, Sec. 425; Hedges v. Dixon County, 150 U. S. 182, 192, 14 S. Ct. 71, 37 L. Ed. 1044; Magniac et al v. Thomson, 15 How. (56 U. S.) 281, 299, 14 L. Ed. 696.

(d) The following relief cognizable only in equity is sought herein as shown by the prayer for relief (Trans. 24):

1. A permanent injunction against the appellees restraining the execution of the deeds of trust or the enforcement of the promissory notes of appellant;

2. The surrender up for cancellation of all written instruments of appellant.

3. The execution and delivery to appellant by appellees Lachman and the two trustees of deeds of transfer of the legal title to the properties involved.

4. The appointment of a receiver *pendente lite to* collect and disburse the rents under the direction of the court.

5. Relief for liability caused by the breach of two express trusts.

We respectfully submit that none of these equitable reliefs could be obtained in an action at law.

(e) Appellant comes into equity with clean hands.

At the time of the institution of the execution proceedings of the second deed of trust by Anderson appellant was in default under neither of his deeds of trust.

Crisman v. Laterman, 149 Cal. 647, 651; 117 A. S. R. 167: 87, Pac. 89.
Bank of Italy v. Bentley, *supra.*

(7) APPLICATION FOR A RECEIVER

Plaintiff's application for a receiver *pendente lite* should have been granted. We have conclusively shown herein that Lachman, under the facts alleged in the complaint and not controverted by defendants, has never acquired any interest in the properties involved, nor any right to their possession. However, the facts alleged show that he has illegally taken possession of the San Francisco properties and has collected the rentals therefrom since February 1st, 1932. (Trans. 20, Par. XV.)

We respectfully submit, that the denial of our application by the lower court was not justified by this showing.

It was said by the California District Court of Appeals in the case of Delannoy v. Queto, 73 Cal. App. 627, 636; 239 Pac. 71:

> This rule is generally recognized, that courts have jurisdiction to appoint receivers for the purpose of preserving assets *pendente lite.*

IV.

IN CONCLUSION

Where a trustor fails to meet his obligation and the beneficiary is compelled to execute his deed of trust the trustor, as a rule, suffers a loss of from two to three times the amount of his original loan. We are so familiar with such proceedings that it is seldom we extend our sympathies to the trustor to console him for his loss. We seem to take such proceedings and losses as natural results and look upon the trustor as a more or less incompetent person, and one who *should* be deprived of his properties. When he enters into his contract the trustor does so with his eyes open and if he fails to pay his debt the law prescribes the penalty to be imposed for his breach of contract.

In the case before us we find the conditions reversed. When the deeds of trust involved in this action were entered into all the parties to them knew and understood the law. The deeds of trust were drawn having in contemplation, and as a part of those agreements, the laws of the State of California. It was understood that all the parties entered into the same with the understanding that each would abide by those laws.

What does this record disclose?

Before the trustor was delinquent we find the beneficiary under the second deed of trust deliberately breaching its part of the contract; and, through its inducement, the trustee under that deed of trust deliberately violating its trust; not only the express trust, but the laws of California governing in such cases.

We next find the beneficiaries, under both deeds of trust, conspiring with the trustee under the first deed of trust to breach the first trust deed, and the laws governing, in their attempt to illegally confiscate the lands and premises of the trustor.

The trustor finding himself helpless against the onslaught of these powerful financial interests now throws himself upon the mercy of this court for protection. He has not petitioned this court for any relief other than that which the laws of the State of California have given him as compensation for the wrongs inflicted upon him by the appellees. Had he been delinquent, this court would not have hesitated to impose upon him such penalties as are prescribed by the agreements and the laws governing; we now respectfully submit that this court should impartially enforce the laws governing the facts in this case as the legislature has prescribed.

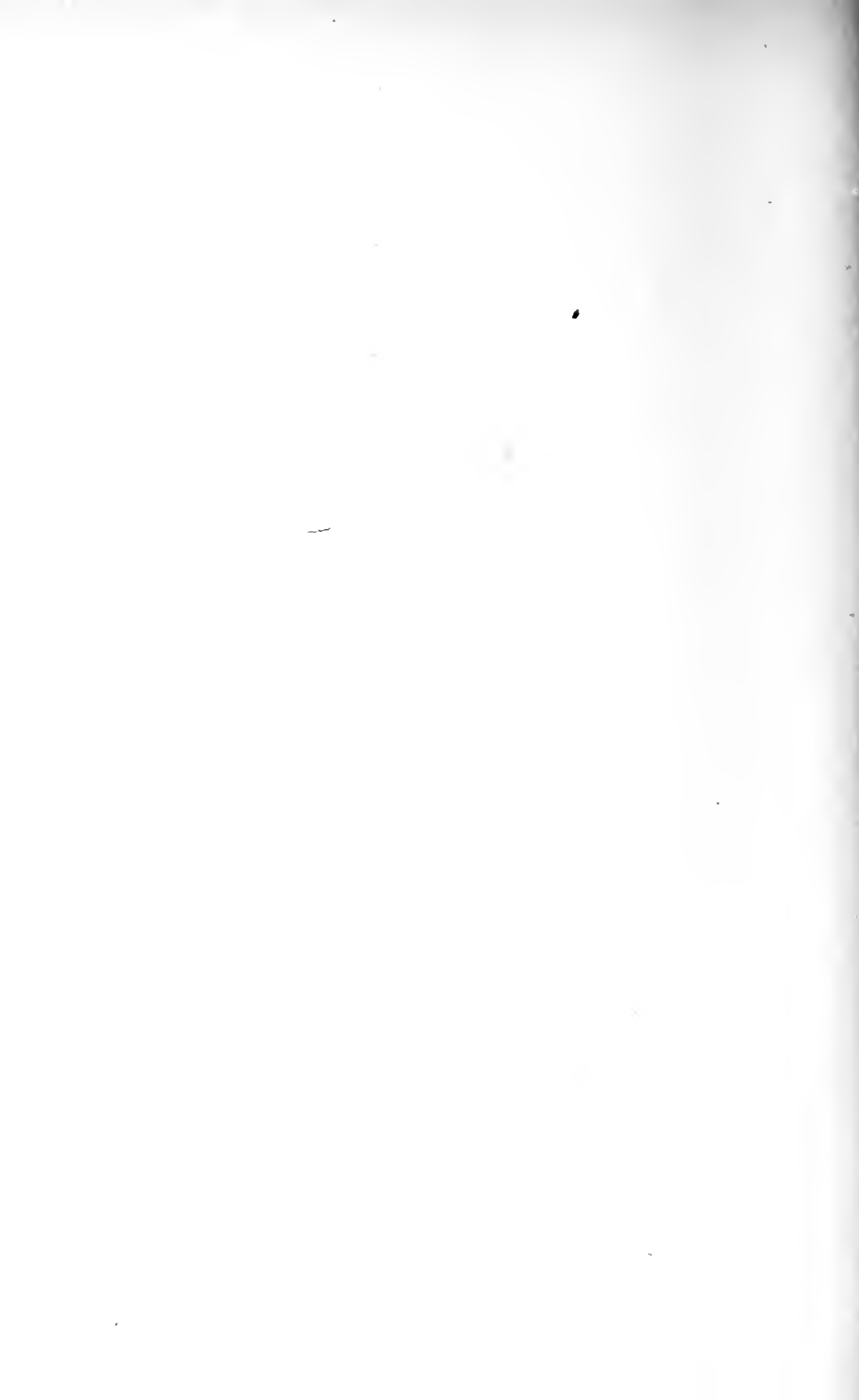
Should there by any point which we may have inadvertently omitted to cover, or which may be raised for the first time in this case by appellees, we respectfully ask permission of this court to file a reply brief after the oral argument.

Appellant respectfully submits that the decree appealed from should be reversed and the cause remanded for further proceedings in the lower court; and that in its instructions this court should direct the lower court to appoint a receiver *pendente lite* as prayed for in his bill of complaint.

Very respectfully submitted,

HERBERT N. DEWOLFE,

Attorney for Appellant.



No. 7323

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

BERNHARD DAVIDOW,
Appellant,
vs.
LACHMAN BRO'S INVESTMENT CO., a corporation; G. P. ANDERSON; TITLE INSURANCE & GUARANTY CO., a corporation; CORPORATION OF AMERICA, a corporation; BANK OF AMERICA OF CALIFORNIA, a corporation; BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION, a corporation,
Appellees.

Upon Appeal from the District Court of the United States for The Northern District of California, Southern Division. Honorable Frank H. Kerrigan, Judge.

Appellant's Opening Brief

PART TWO

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FEB 27 1934

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APPELLANT'S OPENING BRIEF
PART TWO

The attorneys for appellant differ as to the treatment of the questions involved, for which reason each presents the matter from his own viewpoint. They are united in believing that a sale under a second deed of trust, while a first deed of trust subsists, conveys absolutely no title. They also agree that when the bank released a portion of the property held under the first deed of trust the bank thereby lost its right to collect the balance of the debt and waived all the security held by it.

The questions herein raised are of the greatest interest to every lender and borrower upon real estate in California.

VINCENT SURR

QUESTIONS INVOLVED

A.

Does section 2924 of the Civil Code of the State of California provide a mode for transferring title to real estate by sale under a second deed of trust, while a first deed of trust is still outstanding?

B.

If that section attempts so to provide, is not the provision of the Constitution thereby violated which guarantees due process of law?

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

BERNHARD DAVIDOW, *Appellant,* vs. LACHMAN BRO'S INVESTMENT CO., a corporation; G. P. ANDERSON; TITLE INSURANCE & GUARANTY CO., a corporation; CORPORATION OF AMERICA, a corporation; BANK OF AMERICA OF CALIFORNIA, a corporation; BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION, a corporation, *Appellees.*	No. 7323

APPELLANT'S OPENING BRIEF

Motions to dismiss have been sustained to plaintiff's complaint without leave to amend, and judgment for defendants has been entered thereupon.

Two primary questions present themselves:

I.

Is there a cause of action stated?

II.

Has the Federal Court jurisdiction to entertain the matter thus presented?

STATEMENT OF FACTS

Plaintiff borrowed from defendant bank $150,000.00, giving as security a first deed of trust covering two properties, one in the city and the other in the country.

Then plaintiff borrowed $25,000.00 elsewhere, giving a second deed of trust upon the same two properties.

Plaintiff not paying, the second trustee sold him out, obtaining $20,000.00 for both the properties, subject to the first deed of trust. Though a dummy was made use of, the purchaser was in fact the lender of the $25,000.00.

Thereafter such purchaser, wishing the country property to become entirely free from the first deed of trust, approached said bank and induced it to release the country property, for which release the purchaser paid the bank $25,000.00, and neither creditor regarded the debtor as at all concerned.

INTRODUCTION

This case is one of the most important in many years. Its decision will clear away the last, but extensive, remnant of the pathless jungle in which the principles controlling deeds of trust have wandered and lost and confused themselves so long.

The decision is evoked as a corollary or an aftermath to *Bank of Italy* v. *Bentley,* 20 Pac. (2d) 940, the first

case to take the debtor's point of view where deeds of trust are concerned and to establish for all time that the land is always the primary debtor, and the individual is a sort of surety; to wit, merely the secondary debtor under a deed of trust.

Herein will be determined which of two conflicting views is henceforth to prevail, to wit:

(a) The creditor's notion, or

(b) The less familiar, but the only rule consistent with *Bank of Italy* v. *Bentley* (supra).

These two views we now carefully set forth and compare.

THE CREDITOR'S NOTION

Our research thus far has not unearthed a case where the point was squarely put in issue, but the belief has no doubt been quite prevalent in the past and until the decision in the Bentley case, that the following was law, though now shown to be true only in part and to be inequitably false in other parts:

1. That by a first deed of trust in California the title passes to the trustee.

2. That despite such passage of legal title, a residuum, usually termed a legal estate (as distinguished from title), remains in the debtor.

3. That by a second deed of trust, since no title remains to pass, and some effect is surely intended, the residuum passes, as effectually as if by a quitclaim deed.

4. That by a sale under a second deed of trust, pre-

ceding sale under the first, every interest of the debtor passes to the purchaser, subject, however, to the rights of the *creditor* (not the debtor) under the first deed of trust; that the debtor has no more rights in or to the property, or to its further application after such sale.

5. That, as a consequence, the purchaser under second deed of trust, and the creditors and trustee under first deed of trust are thereafter free to release or negotiate or divide the spoils, with no further thought for the debtor.

THE DEBTOR'S VIEW REQUIRED BY THE DECISION IN BANK OF ITALY V. BENTLEY

1. Title passes to the first trustee.

2. A residuum remains in the debtor.

3. That residuum never passes by any mere deed of trust.

4. That a sale under a second deed of trust, while title outstanding in first trustee, cannot pass that title, nor can it nor does it pass the residuum. That all the interests of the debtor, as well as of the creditor under the first deed of trust, remain *in statu quo;* the debtor still having the right to demand that his land be sold under first deed of trust, to reduce or cancel all his debts.

5. That, as a consequence, the purchaser under a second deed of trust sale cannot regard the debtor as out of the picture while the first trust deed exists, and neither he nor the first trustee may do anything to preclude the individual debtor from causing to be realized

from the primary debtor (the property) all the money it will bring to extinguish the debts or diminish possible deficiency.

ARGUMENT

The crux of the controversy is, therefore, whether or not a sale, under second deed of trust while first deed of trust exists, entirely eliminates the debtor.

If it does, then of course the new owner and the first trustee cannot be criticized; and the debtor may not complain if, like the Roman soldiers in the Bible, "They parted His raiment among them; and for His vesture they did cast lots."

No layman or lawyer ever supposed that a debtor giving a second deed of trust intended thereby under any view to dedicate as security more than the margin existing between the amount of his first debt and the total value of his property.

At worst, the debtor figured on his property first paying his first creditor, and then what was left of it paying his second creditor, with the surplus coming to the debtor.

This is exactly what happens if the first trustee sells first.

The sale by the first trustee must always bring a higher price, because, by reason of the doctrine of relation back, he gives title of a date earlier than, and wholly free from, the second deed of trust, and this is equally true however long the chain of those who have succeeded to the second trustee.

The debtor never intended to put himself in a worse position if the second trustee should happen to sell first.

He never contemplated giving away or waiving his right to have his first indebtedness reduced or extinguished at any time by the full sale price obtainable by sale under first deed of trust.

The law presumes a margin in the security after the extinction of all encumbrances,

Cone vs. Combs, 18 Fed. 576,

and we all know that a bank will not lend more than 50% upon the value of a property.

The case at bar furnishes an interesting illustration.

We are dealing with a $150,000.00 first, and with a $25,000.00 second deed of trust. The properties have sold under the second for $20,000.00, and thereby the second creditor has valued them at $170,000.00. To a credit in at least the sum of $170,000.00, the debtor would seem to be inevitably entitled at some time and place.

Under the creditor's prevailing notion theory the debtor has no assets left, and owes $155,000.00 deficiency plus costs.

Had the second creditor bought the same property the same day at the same valuation, at sale under first deed of trust, then under the creditor's prevailing notion the debtor would have owed a deficiency of $5,000.00 instead of $155,000.00.

But a sale under a first deed of trust always produces

a better price, and an extraordinary result follows if the creditor's prevailing notion is correct.

That notion is that by the second creditor rushing things and selling before the first creditor does, he, the second creditor, can become entitled to the surplus, which the first creditor never can become entitled to, no matter how he hurries.

The bank valued these properties at about $300,-000.00, or it would never have lent $150,000.00 on them. Suppose after the second trustee has sold for $20,-000.00, subject to first deed of trust, the first trustee sells for $300,000.00, and suppose that pursuant to the creditor's prevailing notion the debtor left the land-scape when the prior sale under second deed of trust took place; then, they contend that the bank must turn over all that vast surplus to the creditor-purchaser un-der second deed of trust, to-wit: a premium of $150,-000.00 for being second instead of being first! We recognize the tendency of mankind to kick a debtor when he is down. But why treat a first creditor so scurvily as compared with a second creditor? Why for-bid a first creditor, no matter when he sells, from rob-bing the debtor of his surplus, and then present it on a golden platter to a second creditor after the sale under first deed of trust has taken from that second creditor every vestige of title, every apparition of title that he ever pretended even temporarily to hold? The law is very clear that by relation back the sale under first trust deed wipes later transactions off the slate.

So far we have argued this as man to man, without calling in decision to support the obvious logic. Now we will sustain the debtor's position, not merely by reasoning, but also by decision.

In the first place, the *Bank of Italy* v. *Bentley* case decides that the debtor does not owe his $150,000.00 until his land, which is the primary debtor, has first paid all it can (in this instance $170,000.00), thereby showing that the first deed of trust subsists, not only for the creditor, but also for the hitherto forgotten man, the debtor; whatever may have happened under the second deed of trust.

In the second place, we will show that the second trustee never had any title to dispose of, because at all times title reposed in the hands of the first trustee; and he never had any residuum to dispose of, because residuum uncoupled from title never passes by any deed of trust, whether first, second, or third, but remains with the debtor until the creditor who actually holds the title sells him out. In other words, the creditor's prevailing notion does justice to nobody, and has neither logic nor decision to justify it, and falls before the reasoning in *Bank of Italy* v. *Bentley,* 20 Pac. (2d) 940.

Several questions here require our attention:

(A) What passes in California to a trustee under a first deed of trust?

(B) What passes to a trustee under a second deed of trust?

(C) What passes to a trustee under a third deed of trust?

(D) What passes by a sale by first trustee?

(E) What passes by a sale by second trustee while first deed of trust subsists?

(F) What passes by a sale by third trustee, while first and second deeds of trust subsist?

DISCUSSING "A"

California cases telling us what passes by a first deed of trust embrace the following:

Savings & Loan Soc. v. *Burnett,* 106 Cal. 514;

Bryan v. *Hobart,* 44 Cal. App. 315;

Sacramento Bank v. *Murphy* (Cal. 1910), 158 Cal. 390, 115 P. 232, 235;

City Lumber Co. v. *Brown,* 46 Cal. App. 603, 189 Pac. 830-832;

Mitchell v. *Price,* 196 Pac. 82-84;

Bateman v. *Kellogg,* 59 Cal. App. 464, 211 Pac. 46-52;

Hunt v. *Lawton,* 245 Pac. 803-805;

Finnie v. *Smith,* 257 Pac. 866-869;

Bayer v. *Hoagland,* 273 Pac. 58-62;

Wyser v. *Truitt,* 273 Pac. 147-149;

Meadows v. *Snyder,* 282 Pac. 1003-1005;

Am. Bldg. Material Service Co. v. *Wallin,* 2 P. (2d) 1007;

Wasco Creamery & Constr. Co. v. *Coffee,* 3 P. (2d) 588-589;

La Arcada Co. v. *Bk. of Am. of Cal.,* 7 P. (2d) 1115-1117;

Western Mtg. & G. Co. v. *Gray,* 8 P. (2d) 1016-1021;

Sun Lumber Co. v. *Bradfield,* 10 P. (2d) 183-185;

Miller v. *Citizens Tr. & Sav. Bank,* 16 P. (2d) 999-1000;

Tucker v. *Howe,* 17 P. (2d) 104;

In re Thurnell's Est., 19 P. (2d) 14-18;

Bank of Italy v. *Bentley,* 20 P. (2d) 940.

In the last of all these cases (April, 1933), that of *Bank of Italy* v. *Bentley* (20 P. (2d) 940-944), the court says:

> "Although . . . this state at an early date adopted the lien theory of mortgages, it adopted the title theory in reference to deeds of trust.
>
> " . . . Two lines of authority have developed as a result; one group emphasizing the *distinctions* between the two types of security—the other emphasizing the *similarity* between the two."

The next most recent case is *In re Thurnell's Est.,* 19 P. (2d) 14-18, from which we quote:

> "In order to execute the trust, he must be by the deed so far invested with the absolute title to the land as is necessary to enable him to convey it to the purchaser at the trustee's sale, *free of all right, title, interest or estate of the trustor,* or of anyone claiming under or through the trustor by virtue of any transaction occurring after the making of the trust deed. The deed of trust therefore vests in the

> trustee, for the purposes of the trust, *the absolute legal title to the entire* estate held by the trustor immediately prior to its execution, and that estate must remain in the trustee for that purpose until the trust is either executed or ceases to exist by reason of payment of the debt."

None of these cases denies that all the legal title passes to the first trustee. Some of these cases, however, decide that a legal estate, as distinguished from legal title, still remains in the debtor.

Proof that legal title passes to the first trustee, coupled with a power of sale, is found in the fact that he can convey title, at any time, as of the date at which he himself received title, and clear of any appearance of title attaching to any other person by reason of the later acts of debtor or of second or of third trustee thereafter.

Proof that some kind of estate or residuum remains in the debtor till the first trustee sells him out, is furnished by the fact that by a grant deed or by a quitclaim deed, subject to the deed of trust, the debtor may dispossess himself completely of the property.

DISCUSSING "B"

What Passes By a Second Deed of Trust

TITLE clearly cannot pass by a second deed of trust; and that is true not only because the first trustee holds all the title, but further because the cases say he positively has to hold it, in order that he may pass it on.

It is also true because a later sale by first trustee leaves the second trustee and his successors without either lien or title. They just fade out.

Under a mortgage, the debtor retains the title, yet he can give a power that will pass that title at the instance of the mortgagee.

Unlike a mortgagee, a trustee with a power of sale is still powerless unless the title itself reposes in him.

The mortgagee in using his power of sale, acts purely as the agent of the debtor.

The trustee represents alike the debtor and the creditor, and acts not for one party only.

RESIDUUM clearly does not pass to a trustee under a second deed of trust. What magic is there in being second in line to cause residuum to pass to a second trustee, when the same language failed to pass it to a first trustee?

If the mere expedient of duplicate instruments would extract extra security from a debtor, then every first creditor would secure the debt due to him by using duplicate deeds of trust, the first to bring him title, and the second to attract to him the residuum.

Again, a debtor may give three or more valid deeds of trust. If the first one carried off the title, and the second conveyed away the residuum, what then does the third get? The answer is that none gets the residuum,

because it is not in the nature of a deed of trust, be it first or fourth, to convey residuum. Residuum may pass by a deed; or it may pass by an attachment followed by an execution, or it may pass by a sale under a deed of trust, *where the seller has the title* when he makes the sale; but, thank heaven, our law is not yet complicated to the extent where identical language will pass one thing to my first creditor, a distinct thing to my second creditor, and something else or nothing to my third creditor.

What passes by a second deed of trust is the right to extinguish that indebtedness from any surplus at sale under first deed of trust, or the right, perhaps, to subrogation to the first deed of trust, or the right to sell his position as second in line to an outsider; but never the right to have or convey *the land itself* while the first deed of trust subsists.

DISCUSSING "C"

What Passes By a Third Deed of Trust

By a third deed of trust a trustee receives everything that a trustee under a second deed of trust receives, and occupies the same position, except that he is third in line. It was never contemplated that any title or residuum should vest in him or that he should be secured in any measure except by that difference existing

between the sum of the two prior debts and the market value of the property described. He cannot, by going through the form of a sale, which will probably produce little or nothing, preclude the debtor from insisting that the first creditor at some time sell and credit the debtor with all that his property will sell for, unhampered by any act of second or third creditor, always however applying the surplus to extinguish secured and junior debts in order of their preference.

DISCUSSING "D"

What Passes By Sale Under First Deed of Trust

Here the trustee has the title and he has the power, and a sale by him passes title and residuum. Such sale discloses the emptiness of every claim to title or interest of later date than the day when the title came to (not merely from) the trustee.

Those holding under a second deed of trust may sell and sell again, yet the buyer under first deed of trust holds title so clear as against them all that he need not go to court at all to clear the fog which they create away. They have not been able to create a cloud.

If any claim by deed or by lease or by execution, or by deed of trust or sale under mortgage, it is all the same. If their supposed title is later in point of time than the deed to the first trustee, his sale shows the hollowness of their pretensions to title. His sale does

not take any title away from them, but shows they never had any.

Weber v. *McCleverty,* 149 Cal. 316;
Ferry v. *Fisk,* 202 Pac. 965;
Dugand v. *Magnus,* 290 Pac. 310.

DISCUSSING "E"

What Passes By Sale Under a Second Deed of Trust

Obviously nothing passes which the first trustee retains; and he retains all *title.*

And nothing passes which the debtor retains. And he retains all the *residuum* which, as we have seen hereinbefore, does not pass by a deed of trust, and does not pass by the exercise of a power of sale, by a trustee, where such power of sale is divorced from title. The debtor also, and always, retains the right to insist that the security held by the first trustee be exhausted before the debtor owes him any deficiency, and that the surplus from such sale be applied to extinction of the second debt, then the third debt, etc., and balance thereafter to the debtor.

The sale being premature may perhaps serve as an assignment of right to sell title later when and if the first deed of trust is out of the road, or it may not. It is not the purpose of this brief to go beyond what is herein essential.

PRIMARY DEBTOR

The land is the primary debtor; and the human debtor only owes what the land cannot pay; and does

not owe it until the land as primary debtor has paid all it can.

Bank of Italy v. *Bentley,* 20 P. (2d) 943;
McKean v. *German Am. Bk.,* 118 Cal. 339;
Chrisman v. *Lauterman,* 149 Cal. 651;
Curtis v. *Holee,* 195 P. 397;
Ladd v. *Mathis,* 11 P. (2d) 79;
Rein v. *Callaway,* 65 P. 63;
Secs. 2845, 2846, C. C.

The human debtor, in his quasi-surety capacity has a right to require the primary debtor to be made to pay.

Secs. 2840, 2845, 2846, 2850, Civil Code.

DEFICIENCY

Deficiency can only be ascertained by and after a sale in the agreed manner of all, and not merely part, of the property.

Bull v. *Coe,* 77 Cal. 54;
Hall v. *Arnott,* 80 Cal. 348;
Woodward v. *Brown,* 119 Cal. 108;
Case v. *Copren Bros.,* 32 Cal. App. 195;
Ferry v. *Fisk,* 202 Pac. 964;
Lewis v. *Hunt,* 24 Pac. 2d. 556-558.

CONVERSION

With the foregoing principles in mind, it is apparent that the debtor's interest was not extinguished by sale under second deed of trust, and that the creditor-

purchaser at sale under second deed of trust had therefore no right to induce the first trustee to release or sell to him any portion of the property securing the first deed of trust.

It will be recalled that there were two properties, one in the city, the other in the country, and that the first trustee released the country property when the second creditor offered and paid him $25,000.00 for doing so.

Where trustees apply the property entrusted to them to uses other than specified and contemplated, the result is a conversion, or quasi conversion of the debtor's property which wipes out the debt itself. See:

Metheny v. *Davis,* 290 Pac. 91;
Hibernia v. Thornton, 109 Cal. 429;
Bendel v. *Crystal Ice Co.,* 82 Cal. 199;
Blodgett v. *Rheenschildt,* 56 Cal. App. 728-738;
Loughborough v. *McNevin,* 74 Cal. 255;
Everett v. *Buchanan,* 6 N. W. 439;
Rein v. *Calloway,* 65 Pac. 63;
C. C., 2910, 2840, 2845, 2850.

It, therefore, becomes apparent that the first trustee has disabled itself from ascertaining the deficiency, and also from suing for deficiency, if any.

It should also be the rule that the second creditor-purchaser, by persuading the first creditor to depart from its trust and release the land which is the primary debtor, thereby in like manner forfeited its right to collect any money from the debtor whose property these creditors have sought to convert.

Further than this, we do not have to go to show that the *complaint states cause of action:*

To remove cloud upon the plaintiff's land caused by sale, which passed neither title nor residuum;

To cancel evidences of $150,000.00 debt existing no longer, save in appearance;

To ascertain whether or not any portion of the $25,000.00 second indebtedness at all exists, and to define that situation and adjust the rights of everybody.

DUE PROCESS OF LAW

By its terms, Section 2924 of the Civil Code provides a way by which the trustee under a deed of trust may pass title from a debtor to a creditor or to some other purchaser.

A trustee under a *first* deed of trust may make his sale and point to that statute and say truly that by following its provisions he has succeeded in transferring such title.

But a trustee under a *second* deed of trust, while the first deed of trust is still outstanding, points to that statute and claims the shelter of its provisions, and asserts that because of following what the legislature has said literally, he, therefore, who never received title by his second deed of trust has nevertheless, by arbitrary declaration of statute, and by the use of an artificial proceeding unadapted to the nature of his case, passed title which he did not have to a new owner.

Section 2924 of the Civil Code, therefore, when availed of by a trustee under a second deed of trust

while the first trust deed is still outstanding, takes away property without due process of law, passing title from one who has it not, by mere arbitrary fiat, and using a method or shibboleth wholly unadapted to the situation and to the thing desired to be accomplished.

We quote from Section 2924 of the Civil Code the portions with which we are here concerned:

> "The trustee, mortgagee, or beneficiary, shall first file for record, in the office of the recorder of the county wherein the mortgaged or trust property or some part thereof is situated, a notice identifying the mortgage or deed of trust and giving the book and page where the same is recorded or a description of the mortgaged or trust property, and containing a statement that a breach of the obligation for which such mortgage or transfer in trust is security has occurred, and of his election to sell or cause to be sold such property to satisfy the obligation;
>
> "Not less than three months shall thereafter elapse; and
>
> "The mortgagee, trustee or other person authorized to make the sale shall give notice of the time and place thereof, in the manner and for a time not less than that required by law for sales of real property upon execution."

From such terms as

> "his election to sell or cause to be sold *such property,"*

it is clear this section contemplates the sale of property by one who has it to sell, and not the use of these provisions in a vain attempt at a sale by a second trustee who has no title to convey while the first deed of trust subsists.

There is no way in which a man so situated can pass title till the first trustee is disposed of.

There are things which a mere fiat cannot accomplish, and transfer of title from one who has it not is one of them.

> "No state can make everything due process of law which by its own legislation it declares to be such."
>
> *Beck* v. *Ransome Creamery Co.,* 184 Pac. 431-433.

The court also said in that case:

> "The guaranty is always and everywhere present to protect the citizen against arbitrary interference with his rights."

What could be more arbitrary than Sec. 2924, C. C., as applied to second trustees, where first deed of trust is outstanding?

Mr. Justice Swayne, in *Osborne* v. *Michelson,* 80 U. S. (13 Wall.) 634, 20 L. Ed. 689, at page 695, says:

> "The proposition, if carried out in this case, would, in effect, take away one man's property and give it to another. And the deprivation would be 'without due process of law.' This is forbidden by the fundamental principles of the social compact, and is beyond the sphere of the legislative authority both of the state and of the nation. Taylor v. Porter, 4 Hill 146; Wynehauer v. The People, 13 N. Y. 394; Wilkeson v. Leland, 2 Pet. 258."

In *Taylor* v. *Porter,* 4 Hill 146, cited by Mr. Justice Swayne in the case just quoted from, Mr. Justice Bronson says:

> "If the legislature can take the property of A and transfer it to B, they can take A himself, and

either shut him up in prison, or put him to death. But none of these things can be done by mere legislation. There must be 'due process of law.' "

It is said by the author in 1 Hilloughby on the Constitution of the United States, second edition, 1928, Sec. 11, p. 15:

> "The question as to the constitutionality of law does not, in all cases, go to the essential validity of the law, that is, as applicable to any and all conditions, but may depend upon the particular facts to which it is sought to be applied. Thus, in Poindexter v. Greenhow, the court said: 'And it is no objection to the remedy in such cases, that the statute whose application in the particular case is sought to be restrained is not void upon its face, but is complained of only because its operation in the particular instance marks a violation of a constitutional right; for the cases are numerous, where the tax laws of a state, which in their general and proper application are perfectly valid, have been held to become void in particular cases, either as unconstitutional regulations of commerce, or as violations of contracts, prohibited by the constitution, or because in some other way they operate to deprive the party complaining, of a right secured to him by the constitution of the United States.' Thus, the cases are numerous in which the Supreme Court, in holding particular statutes unconstitutional, has qualified or explained this holding by declaring that the statutes 'as construed and applied' are thus to be deemed unconstitutional."

See, also, section 12 of the same author, and the cases cited under both sections.

The court says in *Castillo* v. *McConnico,* 168 U. S. 680:

> "The plaintiff in error has no interest to assert

that the statute is unconstitutional because it might be construed so as to cause it to violate the constitution. His right is limited solely to the enquiry whether in the case which he presents the effect of applying the statute is to deprive him of his property without due process of law."

And again in *Bellingham, etc.,* v. *New Whateum,* 172 U. S. 314, 43 L. 460:

"By its answer the defendant raised a federal question inasmuch as it alleged that the notice of the reassessment was insufficient, and specifically that by reason thereof the property was sought to be taken without due process of law and in conflict with terms of the 14th amendment to the Constitution. This court, therefore, has jurisdiction of the case."

In the case of *Ochoa* v. *Hernandez y Morales,* 57 L. Ed. at page 1437 (230 U. S. 161) the court said:

"Whatever else may be uncertain about the definition of the term 'due process of law,' all authorities agree that it inhibits the taking of one man's property and giving it to another, *contrary to settled usages and modes of procedure* and without notice or an opportunity for a hearing."

Due process of law quite frequently is evoked where a statute is stretched to include within it what never was within its scope, though present in its language.

In *Follette* v. *Pac. Lt. & Power Co.,* 208 Pac. 295-302, the court, in discussing the Torrens Title Act, says:

"What then becomes of the ancient doctrine of bona fides and good faith in the purchases of real property? What of due process of law?

"Under this section of the law *as thus interpreted,* these would no longer exist."

And on page 304 we find:

> "That the provisions of the Land Title Law which purport to entitle the purchaser of a registered title to the premises in the actual possession and occupancy of another to hold the same superior to the prior rights and interests of such possessor, notwithstanding that such registered title is subject to the infirmities shown to exist in the instant case, are obnoxious to the provision of the federal constitution, which provides that persons shall not be deprived of their property without due process of law."

Everywhere the decisions emphasize the necessity of a proceeding adapted to the end desired, as distinct from a meaningless arbitrary pronouncement. See for example:

Golden Gate Bridge, etc., v. *Felt,* 5 P. (2d) 585 (from Preston, J., *dissenting):*

> "That such *discrimination* raises the question of due process of law, and equal protection of the law, has been repeatedly held by the Supreme Court of the United States.
>
> "As said in *Memphis & Charleston Ry.* v. *Pace,* 282 U. S. 241-246, 75 L. Ed. 315:
>
> > 'But however the tax may be laid, *if it be palpably arbitrary,* and therefore *a plain abuse of power,* it falls within the condemnation of the due process clause.' "

Gregory v. *Hecke,* 238 Pac. 787:

> "(793) Due process of law does not necessarily mean that a person is entitled to a trial in a court before he may be deprived of what may be equivalent to property rights. It does, however, mean *that an orderly proceeding, adapted to the nature*

of the case, shall be accorded to the owner of the property, in which he may be heard and where he may defend, enforce and protect his personal rights."

City of L. A. v. *Oliver,* 283 Pac. 298:

"(308) It means a process which

'following the forms of law *is appropriate to the case, and just to the parties to be affected.*'"

Jardine v. *Superior Court,* 293 Pac. 117, ... Cal. App. .... (Nov. 5, 1930):

"(119) Although it is the peculiar province of the legislature to determine procedure, it is nevertheless for the courts to determine whether the method prescribed by the legislature actually brings a person before the court. (Discussing Sec. 388, C. C. P., re service of summons on associations.)

"Petitioners contend that such a procedure is violative of the constitutional provision prohibiting the taking of property without due process of law. (Cites County of Santa Clara v. So. Pac. Ry., 18 Fed. 385.)

"It means a process which, following the forms of law, *is appropriate to the case,* and *just to the parties to be affected.* It must be pursued in the ordinary mode prescribed by the law, *it must be adapted to the end to be attained;* and, wherever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment." (Writ of Prohib. granted in part.)

People v. *Assoc. Oil Co.,* 297 Pac. 536, 537:

"The decisions of the Supreme Court of the United States have recognized and determined that

the states have the right to enact laws, under the police power, providing for the conservation of the oil and gas resources within their borders, and that such laws, *if not clearly arbitrary or unreasonable,* do not contravene the due process and equal protection provisions of the Federal Constitution, nor take property for public use without compensation."

Paiva v. *Calif. Door Co.,* 242 Pac. 887, 891 (Forestry Act, Stats. 1905, p. 235, Sec. 18):

"Civil liability for forest fires.

"Respondent contends that Sec. 18 'provides for a civil liability in cases where a fire is caused or escapes unavoidably'; and that such provision is therefore unconstitutional, in that it would deprive a person of property without due process of law.

"It may be conceded that in a case such as this, it is beyond the power of the legislature to impose a liability for an accidental and unavoidable fire. . . . The provision, however, may be eliminated without affecting the other provisions of the statute."

The foregoing authorities make it clear that the guaranty of due process of law may be invoked at any time when the provisions of a state statute literally produce results uncontemplated and obnoxious to the guaranty in question. That is to say, the courts hold a statute, *as so construed,* to be unconstitutional, while nevertheless the statute is constitutional as regards those properly within its scope.

This is but another way of saying that Section 2924, C. C., is not intended to apply to sales under second deeds of trust, while the first deed of trust subsists, and

is unconstitutional when so applied, and that title is still in plaintiff despite the mummery gone through in following the letter (and not the spirit) of the statute, and causing those lands now to appear as the property of defendant.

In conclusion, and out of our great respect for the Honorable Judge who has dismissed the action, we smite upon our breasts saying that if we had only made ourselves as clear in the District Court as we believe we have herein, we should not have been obliged to ask, as we now do, that said action be reinstated and proceeded with, under enlightening instructions from this court, and that said order of dismissal be reversed.

Respectfully submitted,

VINCENT SURR,

One of two *Attorneys for Plaintiff Appellant.*
and also interested on his own account as holder of deed to share in the property affected, as tenant in common with litigant

No. 7323

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

BERNHARD DAVIDOW, *Appellant,* vs. LACHMAN BROS. INVESTMENT CO. (a corporation), G. P. ANDERSON, TITLE INSURANCE & GUARANTY CO. (a corporation), CORPORATION OF AMERICA (a corporation), BANK OF AMERICA OF CALIFORNIA (a corporation), BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION (a corporation), *Appellees.*	

BRIEF FOR APPELLEES, LACHMAN BROS. INVESTMENT CO. (A CORPORATION), G. P. ANDERSON, AND TITLE INSURANCE & GUARANTY CO. (A CORPORATION),

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Honorable Frank H, Kerrigan, Judge.

JOSEPH E. BIEN,
WERNER OLDS,
209 Post Street, San Francisco,
Attorneys for said Appellees.

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BERNAN-WALSH PRINTING CO., SAN FRANCISCO

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BRIEF FOR APPELLEES, LACHMAN BROS. INVESTMENT CO. (A CORPORATION), G. P. ANDERSON, AND TITLE INSURANCE & GUARANTY CO. (A CORPORATION),

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division. Honorable Frank H. Kerrigan, Judge.

BILL OF COMPLAINT.

Referring only to the portions of the bill which are relevant to this appeal, the facts shown, and *deemed admitted,* are as follows:

On June 16, 1930, appellant borrowed from appellee Bank of America $150,000; as security therefor he executed a deed of trust to appellee Corporation of America, trustee of the real properties in the County of Napa and in the City and County of San Francisco. (Tr. pp. 8, 9.)

On July 15, 1930, appellant borrowed from appellee G. P. Anderson $25,000 and as security therefor he executed a second deed of trust of the same properties to appellee Title Insurance & Guaranty Co., trustee. (Tr. p. 9.)

Appellant defaulted in the payment of money due G. P. Anderson, secured by the second deed of trust, and on February 20, 1931, appellee G. P. Anderson, acting under Section 2924 of the California Civil Code, sold the properties. (T. p. 14.)

It is conceded by appellant that "the proceedings were conducted in accordance with California Civil Code, Sec. 2924." (Brief for Appellant, p. 3. Tr. pp. 14, 15.)

The properties were sold to appellee G. P. Anderson; that in San Francisco for $15,000 and that in Napa County for $5,000, all subject to the first deed of Trust securing $150,000. (Tr. p. 12.) Appellee Title Insurance & Guaranty Co. Trustee executed its deed to G. P. Anderson (Tr. pp. 15, 16), and G. P. Anderson thereafter conveyed to Lachman Bros. Investment Co. (Tr. pp. 16, 17.)

On July 15, 1932, and after the deed from appellee G. P. Anderson to appellee Lachman Bros. Investment Co., appellee Lachman Bros. Investment Co.

paid to appellee Bank of America on the $150,000 deed trust the sum of $25,000, and received a conveyance (Exhibit "D") releasing to the "person or persons entitled thereto" (Lachman Bros. Investment Co.) the Napa County Property. (Tr. pp. 24, 43.)

APPELLANT'S CONTENTIONS.

I.

Appellant claims that, under California law, a trustor can create but *one* valid deed of trust on real property to secure the payment of money or other obligation. That when the trustor has made one deed of trust he has parted with the legal title, and therefore cannot make a second deed of trust on the same property: that therefor appellee Title Insurance & Guaranty Co. as trustee, obtained no title from appellant: that appellee G. P. Anderson as bidder at the sale made by appellee Title Insurance & Guaranty Co. trustee obtained no title: that appellee Lachman Bros. Investment Co. obtained no title by the conveyance from appellee G. P. Anderson: that since appellee Lachman Bros. Investment Co. never had title to the property, it could not deal with appellee Bank of America or appellee Corporation of America and obtain a release of the Napa County property by the payment of $25,000: that because Lachman Bros. Investment Co. did deal with appellees Bank of America and Corporation of America, obtaining a release of the Napa County property, appellant is entitled to all the properties free and clear of both deeds of

trust: that appellee Bank of America should forfeit its $125,000: that appellee Lachman Bros. Investment Co. should forfeit $25,000 it paid to Bank of America and also $25,000 it loaned to appellant under the second deed of trust.

II.

Appellant claims that he has been deprived of the properties without due process of law, in violation of the 14th Amendment of the Constitution of the United States, although the "proceedings were conducted in accordance with California Civil Code Sec. 2924" and although the "provisions and regulations of said Sec. 2924" were "followed literally." (Brief for Appellant p. 3.)

THE ALLEGATIONS OF THE BILL RELEVANT TO THIS APPEAL.

"XIII.

That at the time of the execution of said instrument by the plaintiff, Bernhard Davidow, to the defendant Title Insurance and Guaranty Co., trustee, 'Exhibit B' hereto attached, the said plaintiff had no legal title to said premises, except to the right of possession and the right to the issues thereof having theretofore conveyed the same under said deed of trust marked 'Exhibit A' attached to this complaint, and for said reason the said defendant Title Insurance and Guaranty Co., trustee, acquired no right, title, estate or interest *in presenti* of any kind or nature, either legal or equitable, in or to the said premises

therein described and for said reason all proceedings had and done subsequent to, under, and/or in reliance on the purported Deed of Trust, 'Exhibit B,' hereinbefore referred to, conveyed and transferred to neither said defendant Title Insurance and Guaranty Co., trustee, nor to said defendant G. P. Anderson, any interest of any nature in or to said properties or any part or portion thereof, but that all proceedings had and done under and in accordance with any of the terms or provisions contained in said instrument 'Exhibit B' hereto attached, were and are utterly void and without any legal effect of any kind, and for the same reason and upon the same grounds, the defendant Lachman Bro's. Investment Co. acquired no right, title, state or interest of any kind or nature in and/or to said lands and premises from the defendant G. P. Anderson by the instrument hereinabove set forth as 'Exhibit C.'

That by reason of the aforesaid attempted foreclosure proceedings under said Section 2924 of the California Civil Code, as aforesaid, the said Notices of Sale were insufficient and that by reason thereof plaintiff's said property was sought to be taken and has been taken without due process of law which said proceeding was and is in direct conflict with the express terms of Section 1, of Amendatory Article XIV of the Federal Constitution.

XIV.

Plaintiff further alleges and shows that said Section 2924 of the Civil Code of California, both in its present condition and prior to its amendment in 1931, was and is unconstitutional, illegal and void; that said Statute is not in truth and/or

in fact law, and therefore, cannot be made the basis or authority for any of the acts and/or doings and/or claims of the defendants, or any of them, in the premises; that said pretended law is unconstitutional and void, because:—

(a) Its enactment was beyond the powers vested in the Legislature of the State of California in that it contemplates and provides a method of procedure by which legal rights may be asserted, and legal obligations enforced by the taking of title to property, from the owner thereof, without any notice and fair opportunity to be heard in his defense in a judicial action or at all and thereby deprives the owner of property of rights therein and thereto without due process of law and in that it thereby violates the inhibition of that portion of the Fourteenth Amendment to the Constitution of the United States hereinabove quoted:

(b) The aforesaid acts of defendants under said Section 2924 of the Civil Code of the State of California, if permitted, suffered and/or condoned, would deprive plaintiff of his property and rights in and to the same without due process of law, in violation of the provision in the Constitution of the State of California guaranteeing and securing to all persons within its jurisdiction that no person shall be deprived of the title to property without due process of law and in that it thereby violates the said constitutional provision and denies to him the equal protection of the laws in violation of the provisions of a portion of the Fourteenth Amendment to the Constitution of the United States.

(c) The foreclosure of said instrument 'Exhibit B' under said Civil Code Section 2924, if

permitted, suffered and/or condoned, would subject plaintiff to the deprivation of his property without due process of law and deny to him equal rights and benefits under the laws and thereby abridge the right, privileges and immunities belonging to plaintiff as a citizen of the United States that he shall not, under color of any law, statute, ordinance, regulation or custom, be deprived of the title or right to possession of property without personal notice and without being afforded a fair opportunity to be heard in its and his defense, and, therefore, it violates the inhibition of the provisions of the portion of the Fourteenth Amendment to the Constitution of the United States above quoted."

(Tr. pp. 17, 18, 19.)

This allegation above is particularly called to this Court's attention:

"(b) The aforesaid acts of defendants under said Section 2924 of the Civil Code of the State of California, if permitted, suffered and/or condoned, would deprive plaintiff of his property and rights in and to the same without due process of law, in violation of the provisions in the Constitution of the State of California guaranteeing and securing to all persons within its jurisdiction that no person shall be deprived of the title to property without due process of law."

California Civil Code, Section 2924:

"* * * in any transfer in trust * * * to secure the performance of an obligation a power of sale is conferred upon the mortgagee, trustee or any

other person, to be executed after breach of the obligation for which said mortgage or transfer is a security, such power shall not be exercised * * * until (a) the trustee, mortgagee or beneficiary shall first file for record in the office of the recorder of each county wherein the mortgaged or trust property, or some part or parcel thereof, is situated, a notice of default identifying the mortgage or deed of trust by stating the name or names of the trustor or trustors and giving the book and page where the same is recorded, or a description of the mortgaged or trust property, and containing a statement that a breach of the obligation for which said mortgage or transfer in trust is security has occurred, and of his election to sell or cause to be sold such property to satisfy the obligation; (b) not less than three months shall thereafter elapse; and (c) the mortgagee, trustee or other person authorized to make the sale shall give notice of the time and place thereof in the manner and for a time not less than that required by law for sales of real property upon execution."

Constitution of California, Section XIII:

"No person shall be * * * deprived of life, liberty or property without due process of law."

Constitution of the United States, Amend. XIV, Sec. 1:

"* * * nor shall any state deprive any person of life, liberty or property without due process of law * * *."

I.

ARGUMENT.

THE OWNER OF REAL PROPERTY MAY INCUMBER IT WITH A DEED OF TRUST FOR SECURITY AND THEREAFTER CONVEY THE PROPERTY AND/OR INCUMBER IT WITH FURTHER DEEDS OF TRUST.

A deed of trust for security is substantially but a mortgage with a power of sale.

Sacramento Bank v. Alcorn, 121 Cal. 379.

Notwithstanding a conveyance by deed of trust for security the trustor may thereafter transfer or further incumber the property and his grantee acquires a legal estate against all persons except the trustee and persons claiming under him.

Sacramento Bank v. Alcorn, supra.

"The grantee or devisee of real property, subject to a trust, acquires a legal estate in the property as against all persons except the trustees and those lawfully claiming under them."

California Civil Code, Section 865.

"When the purpose for which an express trust was created ceases, the estate of the trustee also ceases."

California Civil Code, Section 871.

"Under decisions and statutes it would seem that, while we must say that the title passes, none of the incidents of ownership attach, except that the trustees are deemed to have such estate as will enable them to convey. So limited, such a trust has all the characteristics of a *power in trust.* * * *

"Our own records will disclose the fact that trust deeds have been frequently used as security

for loans. Their validity has been upheld in numerous cases beginning very soon after the adoption of the code and continuing until the present time. (Quoting cases.) These decisions, which have been uniform, establish a conclusion which has become a rule of property, and however thoroughly we might now be convinced that the rule is erroneous it should not be disturbed. Doubtless many people have invested their money, relying upon this construction of the law by the highest tribunal of the state, while those who have executed such deeds have done so with the expectation that they would be held valid. Ruin and injustice would result from such a decision as is now sought. If the question as to whether the rule of stare decisis shall prevail be one of policy, there is here no balancing of the evil done against a good attained. The result would be evil only."

Sacramento Bank v. Alcorn, supra.

"The passing of the legal title in such case (a deed of trust) is mostly ideal. It is deemed to have passed only for the purpose of enabling the trustee to convey a title. In all other respects the title remains in the trustor."

Herbert Craft Co. v. Bryan, 140 Cal. 73, 68 Pac. 1020.

"While the deed of trust in one sense passed the title, yet it did so only for the purpose of security, and so, except as to the form and the procedure by which the loan could be enforced, was substantially a mortgage."

Tyler v. Currier, 147 Cal. 31 (81 Pac. 319).

"These decisions are based upon the fact that such a deed, though in form a grant, is really

only a mortgage, and does not convey the fee. A trust-deed of the kind here involved differs from such a deed only in that it conveys the legal title to the trustees so far as may be necessary to the execution of the trust. It carries none of the incidents of ownership of the property, other than the right to convey upon default on the part of the debtor in the payment of his debt. The nature of such an instrument has been extensively discussed by this court, and the sum and substance of such discussion is that while the legal title passes thereunder, and the trustees cannot be held to hold a mere 'lien' on the property, it is *practically and substantially only a mortgage with power of sale.* (See Sacramento Bank vs. Alcorn, 121 Cal. 379, 383 (53 Pac. 813); Tyler vs. Currier, 147 Cal. 31, 36, (81 Pac. 319); Weber vs. McCleverty, 149 Cal. 316, 312, (96 Pac. 706). The legal title is conveyed solely for the purpose of security, leaving in the trustor or his successors a legal estate in the property, as against all persons except the trustees and those lawfully claiming under them. (Civ. Code, secs. 865, 866). *Except as to the trustees and those holding under them, the trustor or his successor is treated by our law as the holder of the legal title.* (King vs. Gotz, 70 Cal. 236, (11 Pac. 656). The legal estate thus left in the trustor or his successors entitled them to the *possession* of the property until their rights have been fully divested by a conveyance made by the trustees in the lawful execution of their trust, and entitled them to exercise all the ordinary incidents of ownership in regard to the property, subject, always, of course, to the execution of the trust. This estate is a sufficient basis for a valid claim of homestead."

McLeod v. Moran, 153 Cal. 97 (94 Pac. 604).

A deed of trust for security transfers to the trustee only such title as will enable the trustee, in case of default, to convey. No incident of ownership reaches the trustee.

Sacramento Bank v. Alcorn, supra.

The grantor is still the beneficial owner and can maintain any necessary action dealing with the title and can convey such title subject to the deed of trust. That such is the effect of such an instrument (a deed of trust) is well settled by the decisions of the State of California:

King v. Gotz, 70 Cal. 236 (11 Pac. 956);
Kennedy v. Noonan, 52 Cal. 326;
Brown v. Campbell, 100 Cal. 635 (35 Pac. 433).

The whole subject is ably reviewed and the California decisions fully cited in the opinion of Gilbert, J., in the case of

U. S. Oil & Land Co. v. Bell et al. (Circuit Court of Appeals, Ninth Circuit) 219 Fed. 785.

See also

So. Pac. Co. v. Doyle, 11 Fed. 253.

See also decisions by the State of California:

Warren v. All Persons, 153 Cal. 775;
Sheldon v. Le Brea Co., 216 Cal. App. 686;
Miller v. Bank, 71 C. A. D. 1175;
Duncan v. Wolfer, 60 Cal. App. 120;
Wyser v. Truitt, 95 Cal. App. 727;
Wasco etc. Co. v. Coffee, 117 Cal. App. 298.

"At early common law the usual method of hypothecating real property as security for a debt

was by means of a deed absolute with an oral agreement of defeasance when and if the debt was paid. Under this doctrine 'title' passed to the mortgagee. If the debtor did not pay the obligation when due, a forfeiture took place. The equity courts, however, at an early date worked out the theory of equity of redemption, which permitted the mortgagor to redeem at any time after default and before foreclosure, and which required the mortgagee to foreclose to cut off this right to redeem. Under this doctrine, it is obvious that the 'title' of the mortgagee before foreclosure is a limited one. The common-law courts held, however, that 'title' to the property was in the mortgagee and this 'title' theory of mortgages still prevails in many states. (1 Jones, Mortgages, 8th ed., chaps. 1, 2, 3.) Early in the history of this state, however, our courts and the legislature, in an attempt to express the real essence of the transaction, adopted the so-called 'lien' theory of mortgages, under which the mortgagee does not get title, but simply obtains a lien. (Civ. Code, secs. 2920, 2927; Dutton vs. Warschauer, 21 Cal. 609 (82 Am. Dec. 765); McMillan vs. Richards, 9 Cal. 365 (70 Am. Dec. 655.).)"

Bank of Italy etc. v. Bentley, 217 Cal. 644 (p. 654).

II.

JURISDICTION.

No diversity of citizenship is involved in this suit and the sole ground of jurisdiction must be that a Federal question is involved.

No Federal question is involved. The allegations of the bill show that the *State of California* is not charged with depriving appellant of his property without due process of law and shows that appellant has not pursued any remedy in the State courts before resorting to the Federal Court. The District Court therefore had no jurisdiction.

Castillo v. McConnico, 168 U. S. 674, 42 Law ed. 622;

In re matter of the Commonwealth of Virginia, 100 U. S. 313, 29 Law ed. 667.

In the last cited case the Supreme Court held:

> "The prohibitions of the 14th Amendment have reference to state action exclusively and not to any action of private individuals. It is the state which is prohibited from denying to any person within its jurisdiction the equal protection of laws * * *."

In *Kiernan v. Multnomah County,* 95 Fed. 849, the Court held:

> "The fourteenth amendment has reference exclusively to *State* action, and not to any action by individuals. It is a prohibition upon the state to 'make or enforce any law which shall abridge the privileges or immunities of citizens of the United States,' or which shall 'deprive any person of life, liberty, or property without due process of law.' It prohibits state legislation in violation of these rights. It does not refer to any action by private individuals (Virginia v. Rives, 100 U. S. 318; U. S. v. Cruikshank, 92 U. S. 542; Civil Rights Cases, 109 U. S. 11, 3 Sup. Ct. 18), otherwise every invasion of the rights of one

person by another would be cognizable in the federal courts under this amendment. The questions sought to be presented in this case relate to the interpretation to be given a law of the state, and the complaint is that this law is being misinterpreted and misapplied, to the injury of the plaintiff in his rights of property. In all such cases, where there is not the requisite diverse citizenship and amount in controversy to give the court jurisdiction, the remedy for the injuries complained of is in the state courts." (Page 849.)

In *Palestine Telephone Co. v. City of Palestine,* 1 Fed. (2nd) 349, the Court say:

> "It is well settled that the Fourth Amendment to the Constitution has reference to legislative enactments by the Congress of the United States (Barron v. Baltimore, 7 Pet. 243, 8 L. ed. 672), and that the Fourteenth Amendment applies only to expressions of the will of the state; that is, the act of the state must be the subject of the controversy. Not only the decisions, but the language of the amendment itself, make that clear. 'Nor shall any *state* deprive any person of life, liberty, or property, without due process of law.' Hamilton Gaslight Co. v. Hamilton, 146 U. S. 258, 13 Sup. Ct. 90, 36 L. Ed. 963; Louisville v. Cumberland Telephone Co., 155 Fed. 729, 84 C. C. A. 151, 12 Ann. Cas. 500; Seattle Electric Company v. Seattle Railway Co., 185 Fed. 369, 107 C. C. A. 421." (Page 349.)

Further, if the trustee under the second deed of trust violated the California law, or if the California law in reference to sales under deeds of trust violates the Constitution of the State of California the

United States District Court had no jurisdiction of the action. Appellant's forum for remedy is the Superior Court of the State of California, and if that Court improperly denies relief, an appeal to the Supreme Court of California, and from there, in the event of an affirmance, to the Supreme Court of the United States.

As stated in *Palestine Telephone Co v. City of Palestine,* supra:

> "The cases of Louisville v. Telephone Company, Memphis, v. Telephone Company, Barney v. City of New York, and other cases I have mentioned above, seem to me, in that state of affairs, to be directly in point. They establish the proposition that, if the ordinance was not within the authority delegated by the state in respect of such matters, this court has no jurisdiction to determine an issue respecting its constitutionality, even though, in fact, it is unconstitutional. The procedure in such a case is in the state courts, and through them to the Supreme Court of the United States. Seattle Electric Co. v. Seattle Railway Co., supra; 5 Enc. U. S. Sup. Repts. 543." (Page 350.)

The bill alleges that under the laws of the State of California a second deed of trust conveys no title "either legal or equitable" to the trustee. (Tr. p. 17.)

In the brief for appellant, page 38, it is stated: "We do not contend at this time that Civil Code Sec. 2924 is unconstitutional as enacted" but "that as construed by the trustee under the second deed of trust it is clearly unconstitutional."

In other words, appellant claims that the trustee under the second deed of trust improperly assumed powers not granted by Section 2924 of the Civil Code of California, and that, therefore, the Fourteenth Amendment of the United States Constitution has been violated by the State of California. Such an argument is clearly inconsistent. The Code section referred to is alleged to be valid, and yet by virtue of a valid statute the State, it is claimed, has violated the Fourteenth Amendment of the United States Constitution.

A case on all fours covering such contention is *City of Louisville v. Cumberland T. & T. Co.,* 155 Fed. 725.

In that case the bill alleged that no power was granted by the State Legislature permitting a municipality to fix telephone rates; that the municipality unlawfully assumed that power by enacting an ordinance fixing the rates, and "that the enactment of said ordinance was and is beyond the power of the common council of said city." Say the Court:

> "If this be true, there was no state authority behind the action of the Louisville common council and no ground to claim that constitutional prohibitions have been violated which are pointed at state aggression only. A municipal ordinance may be the exercise of a delegated legislative power conferred upon it as one of the political subdivisions of the state; but, to be given the force and effect of a law of the state, it must have been enacted in the exercise of some legislative power conferred by the state in the premises." (Page 729.)

If, as claimed by appellant, the state law is valid, and the trustee under the second deed of trust proceeded in violation of a valid law, no state action is involved and no federal question can be presented. If the action of the trustee under the second deed of trust was not within the powers conferred by Section 2924 of the Civil Code (and it is so claimed by appellant) then, as stated in *Palestine Tel. Co. v. City of Palestine,* 1 Fed. (2nd) 349, quoted supra.

> "The procedure in such a case is in the state courts, and thereafter to the Supreme Court of the United States." (Page 350.)

Further, Section 13 of Article 1 of the Constitution of California declares that no person shall "be deprived of life, liberty or property without due process of law."

It is claimed by appellant that he was deprived of his property without due process of law in violation of the Fourteenth Amendment of the Federal Constitution.

It has been consistently held that where a State Constitution contains a provision prohibiting the taking of a person's property without due process of law, the Federal Courts have no jurisdiction under the claim that the property of plaintiff has been taken without due process of law, for the reason that the State Constitution is the highest law of the State and that any law passed by the Legislature in violation of such State Constitution is no law and void, and any action taken under such void law is likewise void; that in such a case appellant's remedy is

in the State Courts, for it will not be presumed that the State Courts would deny its citizens the equal protection of the State Constitution. If, however, the State Courts should err, then appellant has his remedy by appeal to the Supreme Court of the United States. A case decided by the Circuit Court of Appeals of this Circuit, directly in point on the proposition just outlined, is,

> *Seattle Elec. Co. v. Seattle R. N. R. Ry. Co.,* 185 Fed. 365.

The Court say, at pages 371 and 372:

> "But there is a further, and as we believe a conclusive, objection to the claim of right on the part of the complainant to invoke the jurisdiction of the Circuit Court on constitutional grounds. It seems to us that in no aspect of the grant to the defendant is there a real and substantial dispute or controversy dependent upon the application of provisions of the Federal Constitution. If it should be conceded that in some view of the ordinance and defendant's action under color of its provisions there would be a taking of complainant's property without due process of law, still it would not follow that the Circuit Court had jurisdiction of the case unless the ordinance in that aspect would be the supreme law of the state; and that document provides, in article 1, Sec. 13, as does the fourteenth amendment to the Constitution of the United States, that:
>
> 'No person shall be deprived of life, liberty, or property without due process of law.'
>
> Under this provision of the State Constitution the ordinance would be as invalid as under the

Federal Constitution. It would not be a state law. It would be with respect to the former, as the complainant charges in its complaint with respect to the latter, 'without authority in law, null, and void, and of no force and effect.' The presumption is that the courts of Washington will not deny to any of its citizens or corporations the equal protection of its Constitution. If, however, it should turn out that we are mistaken in this respect, the complainant will have his remedy in an appeal from the highest court of the state to the Supreme Court of the United States.

'The doctrine here is that the aggrieved party must first invoke the aid of the state courts, since it is for the state courts to remedy the acts of state officers done without authority of, or contrary to, state law. In such a case the complaining party must exhaust his remedy in the state courts by prosecuting his case to the state court of last resort for cases of that character; and, until he has done this, it cannot be said that he has been denied due process or deprived of his property by state action. If the decision of the highest state court to which he can resort is adverse to him, he can then take his case on writ of error to the United States Supreme Court upon the ground, not that the proceeding or action complained of was contrary to or unauthorized by state law, but upon the ground that what was complained of as a deprivation of life, liberty, or property without due process of law in violation of the fourteenth amendment has at last received the sanction of the state and, in effect, become the act of the state itself.' 5 Ency. U. S. Sup. Ct. Rep. p. 545.

This was substantially the question before the Supreme Court of the United States in Hamilton Gaslight Co. v. Hamilton City, supra, where the court said:

> 'The jurisdiction of that court (Circuit Court of the United States) can be sustained only upon the theory that the suit is one arising under the Constitution of the United States. But the suit would not be of that character, if regarded as one in which the plaintiff sought protection against the violation of the alleged contract by an ordinance to which the state has not, in any form, given or attempted to give the force of law. A municipal ordinance, not passed under supposed legislative authority, cannot be regarded as a law of the state within the meaning of the constitutional prohibition against state laws impairing the obligations of contracts.'

See, also, Barney v. City of New York, 193 U. S. 430, 24 Sup. Ct. 502, 48 L. Ed. 737."

It is respectfully submitted that the decree appealed from should be affirmed.

Dated, San Francisco,
March 28, 1934.

Joseph E. Bien,
Werner Olds,
Attorneys for said Appellees.

No. 7323

IN THE

United States Circuit Court of Appeals

FOR THE

NINTH CIRCUIT 9

BERNHARD DAVIDOW,

Appellant,

vs.

LACHMAN BRO'S INVESTMENT CO., a corporation; G. P. ANDERSON; TITLE INSURANCE & GUARANTY CO., a corporation; CORPORATION OF AMERICA, a corporation; BANK OF AMERICA OF CALIFORNIA, a corporation; BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION, a corporation,

Appellees.

APPELLANT'S BRIEF IN REPLY TO APPELLEES' BRIEF

(Filed by Permission of the Court.)

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Honorable Frank H. Kerrigan, Judge.

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APR 21 1934

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(Filed by Permission of the Court.)

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Honorable Frank H. Kerrigan, Judge.

EQUITIES OF THE CASE.

The holder of the first deed of trust covering plaintiff's properties has filed no brief on the appeal. Such first deed of trust is still outstanding and the legal title to the San Francisco property is still in the first trustee. Its right to sell under such deed of trust has been lost by its unauthorized release of part of the security without the consent of the trustor.

As to the defendant Lachman the situation is different. At a time when the greatest interest it could have in the properties is a contingent remainder, nevertheless claiming the legal title to the properties it has collected some $36,000 in rents, amply sufficient to repay the $25,000 loaned on the second deed of trust, together with its 12% interest. There certainly is no equity that can operate in its favor. As to the $25,000 paid by it to the first beneficiary, it was and is a volunteer and as such is not entitled to be reimbursed.

If it could prevail in this litigation we would have the following most unequitable situation:

Plaintiff borrowed	$150,000.00
and	25,000.00
	$175,000.00

Defendants claim to own his city property (Tr. 13)	$300,000.00
and (Tr. 13) his country property	200,000.00
They have had his rents for 26 months (Tr. 20)	35,880.00
and money for taxes, etc. (Tr. 14)	6,000.00
	$541,880.00

After absorbing this value plus plenty of interest at 12% (Tr. 10-35) the defendants now claim that plaintiff still owes $150,000.00 on his first and that he owes (Tr. 12) $6,500.00 on his second plus interest and attorney fees.

To put it another way, they have given him a credit of about $20,000.00 for all his properties. Not merely do they refuse to let him put his properties up for sale to pay his debts, claiming that he has no further rights therein; but they have made assurance doubly sure by getting part of the security out from under the load of the two debts.

If the law is with them they can do all this, but if the law is against them, then plaintiff cannot help it if they have actually overreached themselves to their injury.

There are several legal barriers across their path.

First, there is the Bentley case (217 Cal. 644, 655) which requires every creditor holding a trust deed to exhaust his security before the human debtor owes him anything, applying the well known rule as to mortgages.

With this in mind, it is clear that no creditor holding a second deed of trust can do a thing to preclude the creditor holding the first deed of trust from selling, not merely at his whim, but as a condition precedent to the collection of his debt. And obviously a sale by the first trustee would pay both debts and leave plenty over for the plaintiff.

Second, it has always been the law in California, that in those instances where the security must be exhausted before the collection of the debt, that security must be kept intact, and if any part of it is released or disposed of, no way remains to determine the deficiency.

In such instances the debt itself is cancelled by such unwarranted acts of quasi-conversion. (Sec. 1512 C. C.)

In the case at bar the second creditor begged, or rather bribed, the first creditor to convert part of the security, which was done.

So now, the common debtor is disabled from following the equitable plan of requiring the first creditor to sell and pay off the two creditors and hand the surplus to the debtor.

If it transpires that a hardship has thus been worked upon everybody by this conversion, the two creditors are the sole ones that did it and he who consents to an act is not wronged by it (Sec. 3515 C. C.). It is useless to heap charges of greed upon Davidow because their own acts against him happen to injure themselves.

It has always been a rule of law, as well as of property, that if a sale took place by the second trustee, followed by a hundred later sales, they all were nullities when the first trustee woke up and sold when he in turn got ready. The only difference is that now the Bentley case gives the debtor a right to set his first creditor going.

Both the defendants in this case have rendered a sale of all the property an impossibility. Who then should suffer by their deliberate and illegal acts of cruelty?

At the hearing of this case Mr. Justice Wilbur asked "What if the deed of trust itself permits sale under 2924 C. C."

Our answer is that we have never denied the naked

validity of a second deed of trust; we have never denied the right to sell at any time under a second deed of trust, but we do emphatically insist that no *title* to the property itself passes by sale under a second deed of trust while a first deed of trust subsists, and that Section 2924 is unconstitutional if construed to confer legal title to property itself by sale under second deed of trust while first subsists, the only interest of the second trustee being a contingent remainder.

All the "equities" in this case, we submit, are with appellant. The complaint shows (Trans. pp. 10-14) that appellee Lachman breached two express agreements to renew the second deed of trust loan. One of these promises was upon the consideration of the payment by appellant of $6,000 upon interest, etc., on the first obligation held by the bank. In the face of this payment appellee Lachman instructed the trustee to execute and sell under the second deed of trust, deliberately breaching its agreement to renew.

Judge Wilbur, at the oral argument, asked if a tender had been made prior to bringing this action. We did not have time to explain our answer at that time, merely answering in the negative. We will now elucidate.

Under the rule of property announced in *Bank of Italy v. Bentley,* the maker of a note secured by a

deed of trust is entitled to compel the creditor to first exhaust the security. Such action is a condition precedent to the personal liability of the debtor on the note. Under the statute of the state, plaintiff had a right to make his offer to pay the note dependent upon the prior sale of the property. This statute is C. C. 1498, and reads as follows:

> "When a debtor is entitled to the performance of a condition precedent to * * * performance on his part, he may make his offer to depend upon the due performance of such condition."

See also Section 1439 C. C.
See also Section 1511 C. C., Subd. 1.

We show herein that the attempted execution of the second deed of trust by the nominal beneficiary and the trustee was void. For such reason, Lachman has never "exhausted" appellant's security. So, before *exhausting its security* Lachman, by its own deliberate wrong, made it impossible for the second trustee to ever acquire title to the property. This wrong consisted in its participation in the breach of contract in taking away property secured by the first deed of trust. We have also shown in our opening briefs that this execution was premature and passed no interest in the security under the trustee's deed, while the first deed of trust subsisted.

For these reasons, Davidow has at no time been

liable to appellees upon his personal obligations; therefore, we again submit, no tender was necessary.

The relief asked for herein may appear somewhat severe. However, the penalties asked are only those expressly imposed by statute. We are only seeking the relief for appellant which the statutes prescribe. The Circuit Court for the Sixth Circuit, in the case of *Nu-Grape Bottling Co. v. Comati,* 40 Fed. (2d) 187, 189, (2), says:

> (2) The contract provision is plain, the legal rights of the parties are clearly established by it, and equity is powerless to strike it down upon any such consideration as that perchance there may be some hardship in the execution of it. (*City of LaFollette vs. LaFollette W. etc. Co.,* 252 Fed. 762, 768 (C. C. A. 6).

SALE BY SECOND TRUSTEE VOID.

In appellant's opening brief, we show that the deed of the second trustee to Anderson passed no title for the reason among others, that the notice of sale was insufficient. (See Appellant's Brief, pp. 41-42). At this time we wish to again call the point to the attention of the Court and cite additional authority.

The second trust deed provided (Trans. 36-37)

that in case of default the holder of the note could cause the "property hereby granted to be sold in order to accomplish the objects of these trusts." * * * "It (the trustee) shall first give notice of the time and place of such sale in the manner provided by the laws of this state in force at the time of giving such notice. * * *"

"The law in force at the time of giving such notice" were C. C. 2924 and C. C. P. 692. In so far as applicable. C. C. P., section 692, at that time, read as follows:

> "Before the sale of property on execution or under power contained in any deed of trust, notice thereof must be given as follows:
>
> 3. IN CASE OF REAL PROPERTY: by posting (written) notice (of the time and place of sale) *particularly describing the property* for twenty days in three public places of the township or city where the property is to be sold and publishing a copy thereof once a week for the same period in some newspaper of general circulation printed and published in the city or township in which the property is situated, if there be one. * * *."

The facts alleged in the complaint show (Trans. p. 16, par. XI), admitted here, that two separate notices of sale were given: one in San Francisco in which the San Francisco property only was de-

scribed, and the other in Napa County in which only the Napa County property was described. "The property" here consisted of the two parcels.

The authorities are practically unanimous where property is to be taken under such a power that a strict adherence to the statute or agreement is necessary; and that when there has been a departure, especially in the notice of sale, a sale thereunder is void.

The leading case upon this point is *Sears v. Livermore,* 17 Ia. 297, 85 Am. Dec. 564.

Quoting from a New York case, the Iowa Court says:

> "It is a familiar rule of law that a special authority must be strictly pursued. When such authority is prescribed by statute, and when in its exercise it operates to divest the citizen of his property, courts cannot be too sedulous in confining it within the boundaries which the legislature have thought fit to prescribe. At this day, and in this country especially, the protection of private rights demands this safeguard and he who will review the adjudications of our courts, involving this principle, will be interested to observe with what uniformity and increasing jealousy the exercise of such a power has been restricted to its own special limits."

And a little further on, commenting upon the facts in the case, the Court says:

> "For if posting in one place is the same as posting in another, or if the doing of one thing is the same as something else (where a strict and not a substantial compliance is demanded), the plaintiff is without remedy; otherwise not. That notice of the sale was thus more generally known, and more persons called to the sale, than if given according to the terms of the deed, can make no difference. The parties agreed upon one notice, at one place, for twenty days. Suppose the trustee posted a thousand notices in as many different places in the county, for three months, and had publication made for the same time in the two newspapers of the town of Maquoketa, but failed to place an advertisement at the place required by the deed, would this be a compliance with the power? Could it be said there was no prejudice? That all this tended to and probably did promote the grantor's or debtor's interest, and therefore the sale should be upheld? If so, then the contract amounts to nothing. If so, then a party can just as well be brought into court by having the sheriff and all the constables in the county, and a hundred of his neighbors, tell him that an action is pending; can just as well be concluded by such notice as by that required by the statute. Such notice might give him vastly more information than an ordinary "summons", or the "notice of the stat-

ute''; but the cardinal trouble is, that it is not what the law requires; and there can be nothing equivalent to this; the law allows no substitute. To the parties under such an instrument as this, the contract furnishes the law. Without the notice which they have agreed upon, there is no power to sell; there is no jurisdiction.''

In the case at bar the statute provided that the notice of sale "must" describe "the property". The property covered by the deed of trust was composed of two parcels—one in the City and County of San Francisco and the other in Napa county. No notice was posted or published which described "the property" as required by the statute.

This Iowa case has been cited approvingly in the two following California cases:

Sav. & Loan Assn. v. Deering, 66 Cal. 281, 285;
Sav. & Loan Assn. v. Burnett, 106 Cal. 514, 534.

To the same effect, in addition to the authorities cited on page 42 of our printed Brief for Appellant, we refer to the following:

85 Am. Dec. 568, Note, where it is said: Directions in powers must be strictly, literally, and precisely followed. (Citing cases)

41 C. J., titl. "Mortgages", p. 955, Note 94; p. 958, Note 50; p. 963, Note 36;

Cleveland v. Bateman, (N. M.) 158 Pac. 648, and cases cited on page 654.

Also the following California cases:

More v. Calkins, 85 Cal. 177, 188;
Beck v. Ransome-Crummey Co., 42 Cal. App. 674, 680 (5).

It should here be noted that any recitals in the trustee's deed to the effect that due notice of sale had been given, are not binding on appellant:

Harker v. Rickershauser, 94 Cal. App. 755, 761;
Seccombe v. Roe, 22 Cal. App. 139; 133 Pac. 507.

JURISDICTION.

The statute is plain. The Federal Court has jurisdiction. under Paragraph 14 of Section 41 of the Judicial Code (28 U. S. C. A.) of all

"Suits to redress deprivation of civil rights" "Fourteenth" "Of all suits at law or in equity authorized to be brought by any person to redress the deprivation, *under color of any law,* statute, ordinance, regulation, custom, or usage *of any State,* of any right, privilege or im-

munity secured by the Constitution of the United States" etc.

We pin our faith to *City of Louisville vs. Cumberland etc. Co.*, 155 Fed. 725, which appellees (page 17) state is *"on all fours"* with the case at bar.

We also rely upon *Seattle Elec. Co. vs. Seattle Ry. Co.*, 185 Fed. 365, which appellees say (Page 19) is *"directly in point."*

We further rest upon *Home Tel. & Tel. Co. vs. L. A.*, 227 U. S. 278; 57 L. Ed. 510; which appellees failed to find.

These cases flatly hold that where a State law itself provides a means for taking property without due process of law, the party injured may go straight to the Federal Courts for redress. But if he merely complains of a municipal ordinance, as distinct from a state law, he still may go direct to the Federal Courts in some instances but he may not seek that forum where the municipal ordinance is not an expression of state law. In such latter event he goes first to his state courts.

Seattle Elec. Co. vs. Seattle etc. Ry. Co., 185 Fed. 365.

(369) "The Circuit Court *has* jurisdiction in a case when the *Constitution or law of a state* is claimed to be in contravention of the

Constitution of the United States, but the claim must be real and substantial.''

(370) ''A municipal *ordinance* passed *pursuant to the authority of the state* which abridges the privileges or immunities of a citizen, or deprives a person of property without due process of law *may be* therefore an act of the state prohibited by the Constitution.''

''But the ordinance to come within the prohibition of the Amendment must, *by implication at least, express the will of the State.''*

''It must be the act of the State.''

City of Louisville vs. Cumberland Tel. & Tel. Co., 155 Fed. 725.

''If the State has conferred authority upon the municipality to establish and enforce reasonable rates for telephone service then the establishment of rates under this power would be the establishment of rates by the State itself. (citation)

''But this is just what the bill charges has not been done, thereby depriving the circuit court of every foundation for its jurisdiction as a suit arising under the Constitution and laws of the United States.''

We lean upon another citation adduced by appellees on page 14, viz:

Kiernan vs. Multnomah County, 95 Fed. 849.

> "The Fourteenth Amendment has reference exclusively to State action, and not to any action by individuals. It is a prohibition upon the State to MAKE or enforce any law which shall * * * deprive any person of property without due process of law. It prohibits State *legislation* in violation of these rights" (etc.).

In the case at bar the State of California has made a law, Section 2924 C. C. which provides a pretended means by which a holder of a second deed of trust (who never had title to property itself) may transfer the *title,* (which neither he nor the debtor has) to a third party.

In other words, that section allows the holder of a second deed of trust to pass actual title before he gets actual title and in face of all the decisions holding that the actual holding of title by a trustee is essential to the validity of any sale by such trustee.

> "the title must remain in the trustee for that purpose"

Bryant vs. Hobert, 44 Cal. App. 315 and *Finnie vs. Smith,* 257 Pac. 869.

That section, if construed to permit a sale by a second trustee while a first deed of trust subsists, is also unconstitutional in that it permits the holder

of a second deed of trust, by the device of a sale, to rob the debtor of the right recognized in the Bentley case to require his property to be sold under the first deed of trust.

The individual did not make the law. The State did it; and now the individual, under color of that law, claims title.

No one will pretend that his acts in going through the motions of a sale under trust deed have any effectivity in the absence of a statute like Section 2924 to back him up; or why attempt to follow it?

After my property is taken without due process of law, by following a statute, the State cannot hide behind a bush or point to the trustee under a second deed of trust and say "He sold it. I didn't."

The sufferer has a right to delete from the statute as unconstitutional any language which accomplishes such result; in other words, the right to a decision that as to him the statute is unconstitutional.

IN FURTHER REPLY TO APPELLEES' BRIEF.

Appellees say (page 2):

> "Appellant defaulted in the payment of money due G. P. Anderson, secured by the second deed of trust, * * *."

This is an erroneous use of the word *defaulted. Default* is thus defined in the Standard Dictionary:

> "1. A failure in the performance or fulfilment of an obligation; neglect or omission of what is due; especially the neglect or omission of a legal requirement."

Under the authority of *Bank of Italy v. Bentley,* 217 Cal. 644, we have shown that appellant was at no time delinquent under either trust deed. (Appellant's Brief 16-17; Part Two 2-3)

Appellees say (page 2):

The properties were sold to appellee Anderson. We have shown herein that that sale was void by reason of the failure to give proper notice.

Appellees say (page 3):

> "Appellant claims that, under California law, a trustor can create but *one* valid deed of trust on real property to secure the payment of money or other obligation."

This is but a half-truth. Appellant claims that a trustor can convey his *present* title but once. *Non dat qui non habet.* That when he delivers a second trust deed while the first is outstanding that the second trustee obtains no present interest in the title. (Appellant's brief, Part Two 11-13)

Appellees quote paragraphs XIII and XIV of the

complaint (pages 4-7). When read alone these paragraphs do not show the facts in detail upon which appellant relies to confer jurisdiction upon the District Court. These details are set forth in paragraphs VI to XI, inclusive. With the exception of the second paragraph of XIII, and the first sentence of paragraph XIV, these quoted paragraphs are mere reiterations and redundant allegations.

Appellees emphasize the following excerpt from the case of *McLeod v. Moran* (page 11):

> "Except as to the trustees and those holding under them, the trustor or his successor is treated by our law as the holder of the legal title."

Strictly speaking, this language is not correct. The law treats him as retaining all the rights incident to the ownership of the granted premises; but in so far as the *title* is concerned, he has completely divested himself of every right to that, both legal and equitable.

> *Ward v. Waterman,* 85 Cal. 488, 506;
> Civil Code 863.

The seeming conflict between the California cases, a great many of which are cited and quoted from by appellees (9-13) has been definitely settled by the State Supreme Court, and is now a settled rule

of property, in the case of *Bank of Italy v. Bentley*, supra. This rule of property is that under a deed of trust the title, both legal and equitable, passes to the trustee. Upon this point there is no quarrel here.

Respectfully submitted,

HERBERT N. DEWOLFE,
VINCENT SURR,
Attorneys for Appellant.

A. E. SHAW,
Of Counsel.

No. 7325

United States
Circuit Court of Appeals
For the Ninth Circuit.

In the Matter of

RALPH L. STEPHENS,

Bankrupt.

BAASH-ROSS TOOL COMPANY, STATE OLDFIELDS SUPPLY COMPANY, STANDARD PIPE AND SUPPLY CO., A. D. MITCHELL, FRANCES HARGROVE AND JUANITA COOK,

Appellants,

vs.

RALPH L. STEPHENS,

Appellee.

Transcript of Record.

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Parker, Stone & Baird Co., Law Printers, Los Angeles.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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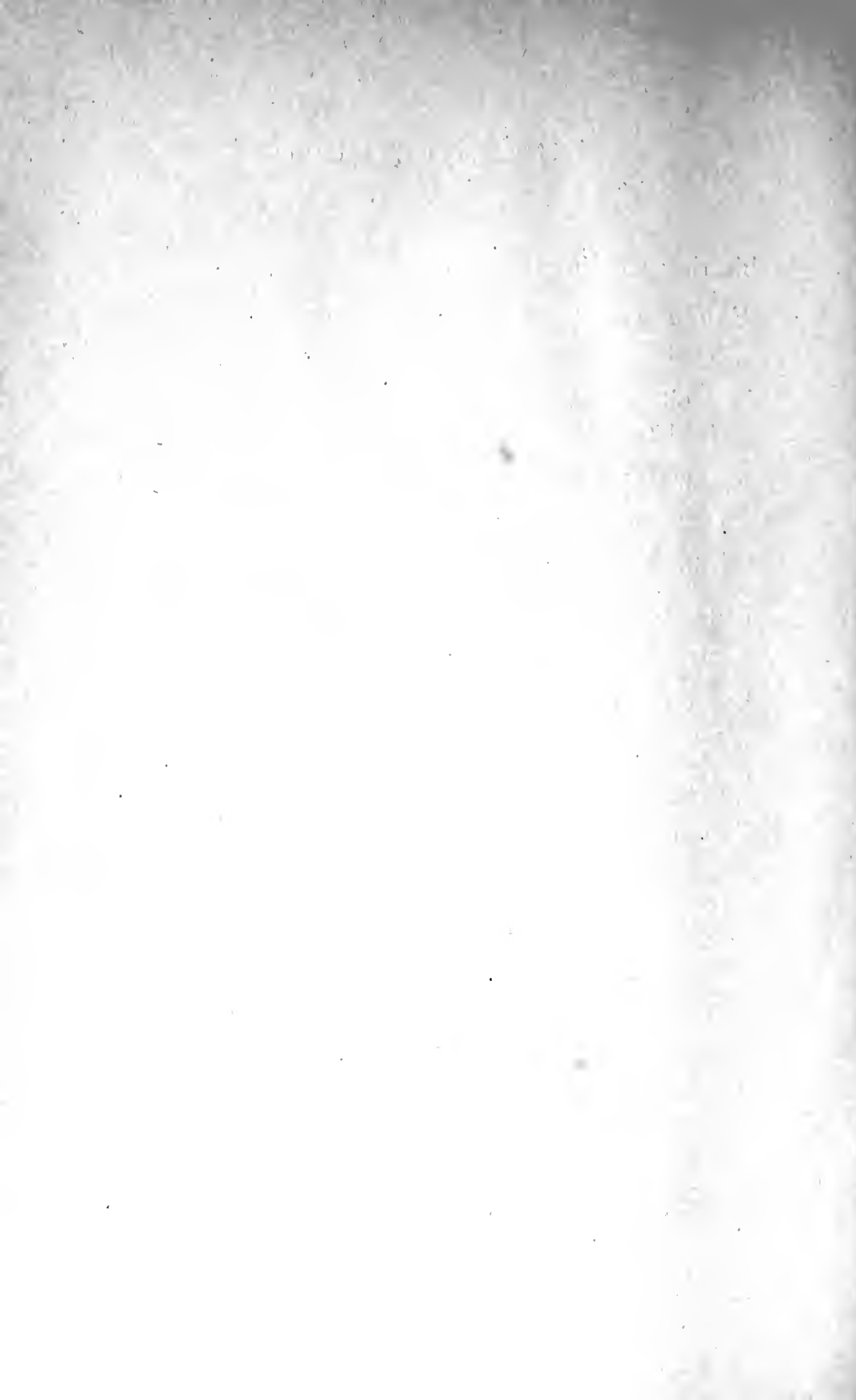

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For Appellee:

FRANK H. LOVE, Esq.,
Stock Exchange Building,
Los Angeles, California.

United States of America, ss.

To THE BANKRUPT HEREIN, RALPH L. STEPHENS, and to FRANK H. LOVE, ESQ., HIS ATTORNEY: Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 1st day of July, A. D. 1933, pursuant to an order allowing appeal filed June 2nd, 1933 in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause entitled in the matter of RALPH L. STEPHENS, Bankrupt, No. 15995-C in Bankruptcy, wherein BAASH-ROSS TOOL COMPANY, STATE OILFIELDS SUPPLY COMPANY, STANDARD PIPE AND SUPPLY CO., A. D. MITCHELL, FRANCES HARGROVE AND JUANITA COOK, are appellants, and you are appellee to show cause, if any there be, why the order granting discharge in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable GEORGE COSGRAVE, United States District Judge for the Southern District of California, this 5 day of June, A. D. 1933, and of the Independence of the United States, the one hundred and fifty-*seventh.*

Geo Cosgrave

U. S. District Judge for the Southern District of California.

RECEIVED COPY: June 5th, 1933

Frank H. Love
Attorney for Bankrupt

[Endorsed]: In the United States Circuit Court of Appeals for the Ninth Circuit Baash-Ross Tool et al Appellants vs. Ralph L. Stephens Bankrupt and Appellee Citation Filed R. S. Zimmerman Clerk, at 55 min past 10:00 o'clock Jun 5, 1933 A. M. By L. B. Figg, Deputy Clerk

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Schedule B [1]

Schedule B. Statement of all Property of Bankrupt

REAL ESTATE

Location and description of all real estate owned by debtor, or held by him. Incumbrances thereon, if any, and dates thereof.

Statement of particulars relating thereto.

	Dollars Cents
Lot 1, Tract 1290 (15 acres at Downey, Calif.) valued at $85,000.00, encumbrances $41.940.00,	43060.00
(Foreclosure action pending on above property)	
Lots 16 to 22 inclusive, Tract 3209 at Compton, Calif., valued at $6000.00, encumbrances $3000.00,	3000.00

Lot 47, Tract 3722 (one-half acre at San Vicente), valued at $3150.00, encumbrances $1347.77,	1802.23
Lot 336, Tract 2262 (2935 S. Flower St., Walnut Park, Cal.) valued at $14,500.00, encumbrances $9500.00, homestead $5000.00,	No value
S½ of Lot 12, Claremont Tract (Duplex in Pasadena), valued at $11,500.00, encumbrances 7000.00,	4500.00
(Foreclosure action pending on above property)	
Lot 132 and Lot 133, Tract 6794 at Inglewood, Calif., valued at $7000.00, encumbrances $2500.00,	4500.00
Lot 174, Tract 180, Cudahy, Calif., valued at $4500.00, encumbrances $2500.00,	2000.00
(Foreclosure action pending on above property)	
SE¼ of NW¼ of SW¼ of Section 3, Township 1 South, Range 10 West, S. B. B. & M. (Azusa, Calif.), valued at $14,000.00, encumbrances $6000.00,	8000.00
(Foreclosure action pending on above property)	
Total	66862.23

Ralph L. Stephens
Bankrupt

Schedule A. B.

Schedule B [2]

PERSONAL PROPERTY

	Dollars Cents
A. Cash on Hand NONE	
B. Bills of Exchange, promissory notes, or securities of any description, (each to be set out separately). As per items listed on pages 8-a and 8-b	52720.91
C. Stock in trade in business of at of the value of NONE	
D. Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz: Household goods located in those certain premises known as 2935 Flower St., Walnut Park, Calif., value	1000.00
Wearing apparel, value	150.00
Total	53870.91

Ralph L. Stephens
Bankrupt

Schedule A B.

SCHEDULE B (2)

Bills of Exchange, promissory notes, etc.

The following notes are made in favor of W. R. White, 2026 Clyde St., Los Angeles, Calif. and endorsed by him to Ralph L. Stephens, the Bankrupt:

(a)	Note of Commercial & Industrial Securities Co. for $10,500.00, dated September 15, 1930, due 60 days from date, interest at 7%, balance due,	6500.00
(b)	Note of George A. Dank, 1245 S. Flower St., Los Angeles, Cal., dated September 18, 1930, due 6 months from date, interest at 7%,	500.00
(c)	Note of A. W. Barnum, 401 Transportation Bldg., Los Angeles, Cal., dated September 18, 1930, due 6 months from date, interest at 7%,	1000.00
(d)	Note of William Knewbow, 308 E. 9th St., Los Angeles, Cal., dated September 13, 1930, due 6 months from date, interest at 7%,	5000.00
(e)	Note of A. S. Grant, 510 W. 28th St., Los Angeles Cal., dated September 15, 1930, due 6 months from date, interest at 7%,	2000.00
(f)	Note of R. M. Kallegian, 6331 Hollywood Blvd., Los Angeles, Cal., dated September 9, 1930, due 6 months from date, interest at 7%,	500.00

(g) Note of Frederick Perl, 1254 W. 6th St., Los Angeles, Cal., dated September 13, 1930, due 6 months from date, interest at 7%, 1000.00

(h) Note of Miller Bucklin, Inc., Los Angeles, Cal., dated September 9, 1930, due 6 months, interest at 7%, 2000.00

(i) Note of Paul Heydenreich, 240 I. W. Hellman Bldg., Los Angeles, Cal., dated September 10, 1931, due 6 months from date, interest at 7%, 500.00

(j) Note dated September 11, 1930 of J. H. Hadfield, 831 W. 10th St., Los Angeles, Cal., due 6 months, interest at 7%, 500.00

(k) Note of R. M. Seymour, (address unknown), 1000.00

(l) Note of Lottie Penter Laboratories, 4335 S. Main St., Los Angeles, Cal., dated September 9, 1930, due 6 months from date, interest at 7%, 1000.00

— — — — — — — — —

Note of A. J. Schnobrick, 3539 Josephine, Lynwood, Cal., dated April 8, 1930, due on demand, 7% interest, 640.50

Note of Geo. J. Davies, 8672 Cypress St., South Gate, Cal., dated December 30, 1929, due on demand, 7% interest, balance due, 1368.67

TOTAL 23509.17

Ralph L Stephens
Bankrupt.

SCHEDULE B (2)

Total brought forward	23509.17
Note of Geo. J. Davies (address above), dated February 14, 1931, due on demand, interest at 7%,	1471.89
Note of F. E. Alman, 6938 Miles Ave., Huntington Park, Cal., dated December 30, 1929, due on demand, interest at 7%,	200.00
Agreement to purchase by John W. and Dora E. Folsom, 4103 Independence Ave., South Gate, Calif., property described as part of Lot 44, Tract 3411, showing a balance of $4599.85 subject to a first trust deed on property of $2500.00, leaving an equity on contract of	2099.85
Chattel Mortgage on furniture at La Fonda Hotel, Huntington Park, Calif., executed by A. G. Wallace and Viola Wallace and assigned by them to J. Robedeaux, La Fonda Hotel, Huntington Park, payable $100.00 per month plus 7% interest, unpaid balance	4900.00
(Above mortgage held as security by City National Bank at Huntington Park, Calif.)	

Trust deed note of Lafayette Adams Corporation, Pomona, Calif. for $4000.00, dated August 28, 1929, interest at 8% payable quarterly, principal payable $40.00 monthly, unpaid balance, 3320.00

Secured by Trust Deed on Lot 24, Block 62 of Third Addition to Huntington Park.

Trust deed note of Andrew C. and Naomia H. Drury, 8468 State St., South Gate, Calif., dated January 20, 1930, interest at 8% payable quarterly, principal payable $40.00 monthly, unpaid balance 3720.00

Secured by Trust Deed on SE¼ of Section 3, Township 15, Range 7 W., S. B. B. & M., in the County of San Bernardino, California.

Trust deed note of Ieleen Schaeffer, 348 S. La Brea Ave., Los Angeles, Calif., dated June 5, 1930, interest at 8% payable quarterly, principal payable $1000.00 on June 15, 1931, $1000.00 on June 15, 1932 and $1500.00 on June 15, 1933, unpaid balance 3500.00

Secured by Trust Deed on Lot 5, Tract 784, City and County of Los Angeles, as per map recorded in Book 10067, Page 211, Official Records.

Trust deed note of George J. and Julia Davies, in favor of Deeb and Sara Nassar and assigned to Ralph L. Stephens, dated September 30, 1929, interest at 7% payable quarterly, principal payable $2000.00 on September 30, 1932, $2000. on Sept. 30, 1933 and balance Sept. 30, 1934	10000.00
Secured by mortgage on a particular portion of Section 10, Township 1 South, Range 7 West, S. B. B. & M., San Bernardino County, Calif.	
TOTAL	52720.91

Ralph L. Stephens
Bankrupt

Schedule B [2] Continued

PERSONAL PROPERTY

	Dollars	Cents
E. Books, prints and pictures, viz: NONE		
F. Horses, cows, sheep and other animals (with number of each), viz: NONE		
G. Carriages and other vehicles, viz: NONE		

H. Farming stock and implements of husbandry, viz:

NONE

Total

Ralph L. Stephens
Bankrupt

Schedule A. B.

Schedule B [2] Continued

PERSONAL PROPERTY

Dollars Cents

I. Shipping and shares in vessels, viz:

NONE

K. Machinery, fixtures, apparatus and tools used in business, with the place where each is situated, viz:

NONE

L. Patents, copyrights and trademarks, viz:

NONE

M. Goods or personal property of any other description, with the place where each is situated, viz:

NONE

Total

Ralph L. Stephens

Bankrupt

Schedule A. B.

Schedule B [3]

CHOSES IN ACTION

	Dollars Cents
A. Debts due petitioner on open account.	
A. J. Schnobrick, 3539 Josephine, Lynwood, Calif.	435.00
(Advances in cash from April to September, 1930)	
L. H. Fretz, 3907 Liberty Blvd., South Gate, Calif.	7275.70
L. H. Fretz, (address above)	739.80
Andrew C. Drury, 8468 State St., South Gate, Calif.	1683.38

B. Stock in incorporated companies, interest in joint stock companies, and negotiable bonds.

400	shares Emsco Derrick & Equipment,	4800.00
	Interest in Huntington Park Oil Syndicate,	2175.00
100	Shares Star Roof Corporation,	1000.00
1064	Shares Conservative Mortgage & Finance Co.,	15960.00
46	shares City National Bank	10087.60
	Interest in Huntington Park Financial Associates and El Dorado Finance Co.,	1602.54

C. Policies of Insurance.

Life Insurance Policy in Mutual Life Insurance Co. of New York,	5000.00
(Held by National Bank of Lynwood, Lynwood, Calif. as collateral security)	
Life Insurance Policy in Aetna Life Insurance Co.	25000.00

D. Unliquidated Claims of every nature with their estimated value.

Superior Court judgment in case of Ralph L. Stephens vs. Bob Feinstein, for $256,162.20, with interest at seven per cent per annum from July 11th, 1929. Appealed to District Court of Appeals, Second Civil No. 7091 — Value unknown

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E. Deposits of money in banking institutions and elsewhere.

NONE

Total 70759.02

Ralph L. Stephens
Bankrupt

Schedule A. B.

Schedule B [4]

PROPERTY IN REVERSION, REMAINDER OR EXPECTANCY, INCLUDING PROPERTY HELD IN TRUST FOR THE DEBTOR OR SUBJECT TO ANY POWER OR RIGHT TO DISPOSE OF OR TO CHARGE

N. B.—A particular description of each interest must be entered. If all, or any of the debtor's property has been conveyed by deed of assignment or otherwise, for the benefit of creditors, the date of such deeds should be stated, then name and address of the person to whom the property was conveyed; the amount realized from the proceeds thereof, and the disposal of the same, as far as known to the debtor.

General Interest	Particular Description	Supposed Value of My Interest	
		Dollars	Cents
Interest in land.			
	NONE		
Personal property.			
	NONE		

Property in money, stocks, shares, bonds, annuities, etc.

NONE

Rights and powers, legacies and bequests.

NONE

Total . .

Property heretofore conveyed for the benefit of Creditors.

What portion of Debtor's property has been conveyed by deed of assignment, or otherwise for benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, so far as know to debtor.

Amount realized from Proceeds of Property Conveyed

What sum or sums have been paid to counsel, and to whom for services rendered or to be rendered in this bankruptcy.

NONE

Total

Ralph L. Stephens
BANKRUPT

Schedule A. B.

Schedule B [5]

A particular statement of the Property claimed as Exempt from the Acts of Congress relating to Bankruptcy, giving each item of Property and its valuation; and if any portion of it is Real Estate, its location, description and present use.

Dollars Cents

Military uniforms, arms and equipments.

NONE

Property claimed to be exempt by State Laws; its valuation; whether real or personal; its description and present use; and reference given to the statute of the State creating the exemption.

NONE

Total

Ralph L. Stephens

Bankrupt

Schedule A. B.

Schedule B [6]

BOOKS, PAPERS, DEEDS AND WRITINGS RELATING TO BANKRUPT'S BUSINESS AND ESTATE

The following is a true list of all books, papers, deeds and writings relating to my trade, business dealings, estate and effects, or any part thereof, which at the date of this petition, are in my possession, or under my custody or control, or which are in the possession or custody of any person in trust for me, or for my use, benefit or advantage; and also of all others which have been heretofore, at any time, in my possession or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

		Dollars	Cents
Books	NONE		
Deeds	NONE		
Papers	NONE		

Ralph L. Stephens
Bankrupt

Oath to Schedule B

United States of America
Southern District of California } ss.
Central Division

On this 31st day of August, A. D. 1931, before me, personally came RALPH L. STEPHENS, the person mentioned in and who subscribed to the foregoing schedule and who, being by me first duly sworn, did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the Acts of Congress relating to bankruptcy.

[Seal] Anne Marcus

Notary Public in and for the County of Los Angeles State of California

(Official Character)

Schedule A. B.

[Endorsed]: No. 15995-C United States District Court Southern District of California Central Division In the Matter of Ralph L. Stephens Bankrupt Petition by Debtor with Schedules A and B (Schedules must be filed in triplicate) Filed Sep 14 1931 at .... min. past 11 o'clock am R. S. Zimmerman, Clerk By L. B. Figg Deputy Frank H. Love 1316 Stock Exchange Bldg. Los Angeles, Calif. Tr 0191 Attorney for Bankrupt

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

	)	In Bankruptcy
In the Matter of	)	No. 15995-C
	)	SPECIFICATIONS
RALPH L. STEPHENS,	)	OF GROUNDS OF
	)	OPPOSITION TO
Bankrupt.	)	BANKRUPT'S
	)	DISCHARGE

Come now the Baash-Ross Tool Company State Oilfields Supply Company, Standard Pipe and Supply Co., A. D. Mitchell, Frances Hargrove and Juanita Cook and do hereby oppose the granting to the Bankrupt of a discharge from his debts, and for their grounds of opposition, file the following specifications:

I.

That said Bankrupt has, with intent to conceal his financial condition, failed to keep books of account or records from which said condition might be ascertained.

II.

That on or about the 10th day of October, 1930, said Bankrupt, for the purpose of obtaining property upon credit from the State Oilfields Supply Company and

Baash-Ross Tool Company, made a statement in writing to said companies, which was materially false in each and all of the several matters and things therein contained, and that said statement showed said bankrupt to have a net worth of approximately $250,000.00, whereas in truth and in fact, said bankrupt was at said time insolvent.

III.

Said bankrupt, with intent to hinder, delay and defraud his creditors, transferred, removed and concealed, and permitted to be transferred, removed and concealed a portion of his property, to-wit: that he caused to be transferred to one Leo H. Fretz a life membership in the Potrero Country Club, without any consideration, and while insolvent, and which membership was issued to the said Fretz, endorsed in blank by the latter, and delivered to said Bankrupt, as part of the scheme and plan of the Bankrupt to defaud his creditors; that said Bankrupt did, on or about the 30th day of October, 1930, cause to be transferred to B. W. Smith his Studebaker five passenger sedan, 1930 model, license No. 6 D 8064, without any consideration and while insolvent.

IV.

That while insolvent, and without any consideration, and with intent to hinder, delay and defraud his creditors, said Bankrupt caused to be transferred the following parcels of real property, to-wit:

To Oscar Stephens	Lot No. 1, Tract No. 1290	
To Bertram Stephens	Lots Nos. 16 to 22 inclusive, Tract No. 3209	
To Claire M. Smith	Lot No. 47, Tract No. 3722	
To Claire M. Smith	South ½ of Lot No. 12, Claremont Tract	Mar. 28, 1930
To Claire M. Smith	Lots Nos. 132 & 133, Tract No. 6794	Mar. 22, 1930
To Bertram Stephens	SE¼ of NW¼ of SW¼ of Sec. 3, Township 1 South, Range 10 West;	

V.

That within twelve months immediately preceding the filing of the bankruptcy petition herein said bankrupt, for the purpose of concealing and removing a portion of his property from the process of his creditors, caused to be conveyed property belonging to him and described in paragraph IV herein, to the persons named in Paragraph IV hereof.

WHEREFORE, said opposing creditors pray that the Court deny said bankrupt's petition for discharge.

R. Dechter

Attorney for petitioning creditors

UNITED STATES OF AMERICA)
Southern District of California) ss.
Central Division)

H. R. MURRAY, being by me first duly sworn, deposes and says: that he is the Secretary-Treasurer of BAASH-ROSS TOOL COMPANY, a corporation, one of the opposing creditors in the above entitled action; that he has read the foregoing SPECIFICATIONS OF GROUNDS OF OPPOSITION TO BANKRUPT'S DISCHARGE and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

H. R. Murray

Subscribed and sworn to before me this 12 day of November, 1932.

[Seal] C. E. Riordan
Notary Public in and for the County of Los Angeles, State of California
My Commission Expires April 20, 1934

[Endorsed]: No 15995-C In the United States District Court In and for the Southern District of California Central Division In the Matter of Ralph L. Stephens, Bankrupt Specifications of Grounds of Opposition to Bankrupt's Discharge Filed R. S. Zimmerman, Clerk at 59 min past 1:00 o'clock Nov. 14, 1932 P. M. By L. B. Figg, Deputy Clerk. Law Offices Raphael Dechter 825 Stock Exchange Building 739 South Spring Street Los Angeles, Trinity 8383 Attorney for Opposing Creditors.

(AFFIDAVIT OF SERVICE BY MAIL—
1013a, C. C. P.)

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

In the Matter of	)	
	)	In Bankruptcy
RALPH L. STEPHENS,	)	
	)	No. 15995-C
Bankrupt.	)	

STATE OF CALIFORNIA,)
) ss.
COUNTY OF LOS ANGELES)

ADELE McMANNUS, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is: 825 Stock Exchange Building, 639 South Spring Street, Los Angeles, California; that on the 14th day of November, 1932, affiant served the within SPECIFICATIONS OF GROUNDS OF OPPOSITION TO BANKRUPT'S DISCHARGE on the Bankrupt in said action,

by placing a true copy thereof in an envelope addressed to the attorney of record for said Bankrupt, at the office address of said attorney, as follows: "Mr. Frank H. Love, Attorney at Law, 805 Stock Exchange Bldg., 639 South Spring Street, Los Angeles, California"; and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorney for the persons by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed, or there is a regular communication by mail between the place of mailing and the place so addressed.

Adele McMannus

Subscribed and sworn to before me this 14th day of November, 1932.

[Seal] Raphael Dechter

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 44 min past 1:00 o'clock Nov. 15, 1932 P. M. By L. B. Figg, Deputy Clerk

At a stated term, to wit: The SEPTEMBER Term, A. D. 1932, of the District Court of the United States of America, within and for the CENTRAL Division of the Southern District of California, held at the Court Room thereof, in the City of LOS ANGELES on MONDAY the 7th day of NOVEMBER in the year of our Lord one thousand nine hundred and thirty-two

Present:

The Honorable GEO. COSGRAVE, District Judge.

In the Matter of)
)
RALPH L. STEPHENS,) No. 15995-C-Bkcy
)
Bankrupt.)

This matter coming on at this time for hearing on the Petition of the Bankrupt for Discharge, and Baash-Ross Tool Co., et al., having objected to the granting of a Discharge, it is ordered that the Objecting Creditor be granted ten days within which to file Specifications of Objections, and that upon the filing of such Specifications, etc., that this matter be referred to James L. Irwin, Esq., Referee, as Special Master, for hearing the issues raised by said Specifications, and to report thereon to the Court.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

In the Matter of	)	In Bankruptcy
	)	No. 15995-C
RALPH L. STEPHENS,	)	
	)	STATEMENT OF
Bankrupt.	)	FACTS

TESTIMONY OF RALPH L. STEPHENS, BANKRUPT

My name is Ralph L. Stephens. That is my signature on the financial statements marked Objecting Creditors Exhibits 1 and 2, dated respectively March 3rd, 1930 and October 4, 1930; that is my signature at the bottom of the statement and at the bottom of the letter dated September 30, 1930, which two documents are designated as Objecting Creditors Exhibit 3. I executed Exhibit 3 in order to induce the State Oil fields Supply Company to give me an extension of thirty days on the money due them by the Conservative Petroleum Company. State Oilfields Supply Company had demanded payment of the account and would not give an extension unless payment thereof was guaranteed by me. I executed the financial statement of October 4, 1930, in order to induce the Baash-Ross Tool Company to accept my guaranty of the account of the Conservative Petroleum Com-

pany, to whom they furnished credit for more than $8,000.00, relying upon my financial statement and my guaranty, as well as upon statement and guaranty furnished by Mr. Minch and Mr. McIntosh. I have no recollection of what the item appearing on the October 4, 1930 statement of "Notes payable to bank, $21,650.63; Notes payable to others, $9,358.64" was. They were probably notes on real estate deals that I had. I had no accounts payable as of October 4, 1930, or as of September 10, 1930 other than personal obligations which I did not include in my statement. At the time I made the statement of October 4, 1930, showing my condition as of September 1, 1930, being Objecting Creditors Exhibit 2 in this matter, there was a suit pending against me by Bob Feinstein for approximately $16,000.00 or $17,000.00. I also filed a suit against Bob Feinstein. I did not list my suit against him in my statement, nor did I list his claim against me.

(It was thereupon stipulated by and between counsel for objecting creditors and counsel for the Bankrupt that a judgment was rendered and entered in the Superior Court of Los Angeles County in favor of Bob Feinstein and against Ralph L. Stephens in a sum in excess of $16,000.00, and that in the suit filed by the bankrupt against Bob Feinstein, a judgment was rendered by the Superior Court of Los Angeles County that the bankrupt take nothing and that said Bob Feinstein have judgment against the bankrupt for his costs.)

Objecting Creditors Exhibit "A" for identification is in the handwriting of my secretary. It represents the

(Testimony of Claire M. Smith)

condition of my affairs after the time of the filing of the petition in bankruptcy. On September 1, 1930, the encumbrances on land owned by me and shown in the statement, Objecting Creditors Exhibit 2, amounted to $70,897.00. (Pages 1-12, R. T.)

"Q I call your attention to the fact that on this statement which you gave me shortly after your bankruptcy (Exhibit "A" for Identification) it shows: 'Detail: Property—value' and then lists real estate in the amount of $250,400.00.

A Yes.

Q And I call your attention to the fact that on your statement of assets and liabilities it shows as $266,859.00; can you explain that difference?

MR. LOVE: I object to the question, because there has been nothing introduced here as being the true representation of any documents or figures kept by the bankrupt.

THE SPECIAL MASTER: But he stated that they do constitute assets and liabilities that he had at that time."

(Line 22, P. 12 to Line 9, P. 13, R. T.)

TESTIMONY OF CLAIRE M. SMITH

The document marked "Exhibit A" for Identification is in my handwriting with the exception of the items marked in ink on the right-hand side. (Pp. 13-14, R. T.)

TESTIMONY OF RAPHAEL DECHTER

The document, Exhibit "A" for Identification, was produced from my records, having been given to me by the bankrupt when I examined him in Mr. Moss' Court in the private room of the Court reporter, Mr. Olson. The notations in ink on said document are in my handwriting. (P. 14, R. T.)

Whereupon said document was admitted as Objecting Creditors Exhibit 4.

TESTIMONY OF RALPH L. STEPHENS,

Bankrupt resumed.

(P. 14, R. T.)

The item of $250,400.00 on Exhibit 4, covering real estate, stocks, bonds, etc. corresponds to the same item shown on statement to the Baash-Ross Tool Company under the item of real estate, stocks and bonds in the amount of $266,859.00.

"A Yes, but you received this notation here as to business conditions when they were different, and depreciation on stocks or on a deal of real estate, foreclosure or something might have made that difference in there."

(P. 14, Line 18, R. T.)

The item of $70,897.00 represents encumbrances on item 8, which includes the real estate shown in said statement to the Baash-Ross Tool Company. The item: "Encumbrances on land, $114,568.37" represented encumbrances on real estate shown on Objecting Creditors Exhibit 4. The real estate shown on Exhibit 4 included

(Testimony of Ralph L. Stephens)

property in the names of other persons. The item on page 3 of the statement to the Baash-Ross Tool Company, being Objecting Creditors Exhibit 2, "Long Beach Boulevard frontage" corresponds to Lots 187 and 188, etc. on Exhibit 4, and is set up as of the value of $85,000.00, with encumbrances of $29,900.00, and was included in statement, Objecting Creditors Exhibit 2.

"Q You had property in other people's names?

A Yes, in syndicates and I was not liable personally for the full amount."

(P. 16, Line 5, R. T.)

I don't know if the property at that time was standing in my name or in the name of my secretary, Claire M. Smith, and in January of 1929, when I gave you the statement, Objecting Creditors Exhibit 4, said property had been deeded back to the holder of the encumbrance in order to avoid a deficiency judgment. Said property could have been in my secretary's name or Mr. Davies' name or my brother's name or those I used as dummies in some of the deals that I made.

"A I gave you all the deeds to it and you should know; I delivered all of the deeds to the different properties to you.

Q That property was sold under foreclosure, wasn't it?

A I deeded it over to them on the advice of the Trustee at the time, it being agreed on that rather than have them—"

(Line 4, Page 17, R. T.)

"MR. LOVE: And I want to call the attention of the Court to the schedules showing these particular prop-

(Testimony of Ralph L. Stephens)
erties were included in the schedules in bankruptcy, and that they are the exact properties Mr. Dechter sets forth in the specifications of objection.

THE SPECIAL MASTER: All right.

MR. LOVE: And those being the only particular properties he has any reference to in the specifications."

(P. 20, Line 15, R. T.)

The item designated as item 8 on page 3 of Objecting Creditors Exhibit 2: "Lots, Inglewood", corresponds to the item on Objecting Creditors Exhibit 4, designated as "Lots 132 and 133, Tract 6794, $7,000.00" and stood in the name of any of the persons whom I have mentioned heretofore. I do not know in whose name it stood. After being shown a deed recorded March 22, 1930, from LaFayette Adams Corporation to Claire M. Smith, covering Lots 132-133, Tract 6794, City of Inglegood, I would say that it apparently stood of record in my secretary's name at the time I gave the statement to the Baash-Ross Tool Company.

"MR. LOVE: Yes, we stipulate he always owned the property and that it was carried by a deed in their names, and that they delivered the deeds back to him and that he held the unrecorded deeds which he delivered to the Trustee at the time the Trustee was appointed in this matter."

(P. 22, Line 16, R. T.)

(It was thereupon stipulated by counsel for the Bankrupt that certain pieces of property belonging to the Bankrupt stood in the name of the Bankrupt's secretary, Miss Smith, his brother and his father. It was also stipulated that unrecorded deeds to the property stand-

(Testimony of Ralph L. Stephens)

ing in the names of said third persons had been turned over to the Trustee in Bankruptcy, after the election of a Trustee.)

The item 8, Page 3, Objecting Creditors Exhibit 2, "Orange Grove, Azusa" is the same property as described on Objecting Creditors Exhibit 4 as being the SE¼ of the NW¼ of the SW¼ of Section 3, Township 1 S., Range 10 W., Azusa, $14,000.00.

(It was thereupon stipulated that the same constituted the same items on both statements. It was also stipulated that the South Gate lots, as shown in Objecting Creditors Exhibit 4, were included in the statement, Objecting Creditors Exhibit 2. The same stipulation was made as to Lot 47, Tract 3722, one-half acre, and that said property was carried in the names of others than the bankrupt.)

"Q Do you make any reference in this statement to the fact of your indebtedness to Bob Feinstein of $17,000.00 or $18,000.00?

A He owed me; I didn't claim that I owed him.

Q But you knew he had this suit against you at the time you made this statement?

A Yes, he had the suit against me.

MR. LOVE: We have stipulated that they got a judgment against Mr. Stephens, and he testified he had a justifiable claim against Bob Feinstein, but he is not responsible for the way the matter terminated in court, years afterwards."

(Line 25, P. 22 to Line 9, P. 23, R. T.)

TESTIMONY OF FRANK KENNEDY

(P. 24, R. T.)

I am in the merchandising business. I was connected with Myron H. Wells, Trustee in Bankruptcy of Ralph L. Stephens, as auditor and appraiser. I have had experience in au*dt*ing and appraising for approximately twenty years. Shortly after the election of the Trustee, I examined the Downey property, Lot 1, Tract 1290, 15 acres, Downey.

"Q As a result of your investigation of this Ralph L. Stephens estate, will you state to the court what the values of the different pieces of real property were that are listed in the schedules, that is, at the time the Trustee was elected?

MR. LOVE: I object to the question on the ground that it is immaterial in this respect, that it does not establish that the values of the properties at the time the Trustee took charge of them were anywhere near the value of the property at the time the financial statement was made."

(P. 24, Line 25, to P. 25, Line 8, R. T.)

"THE SPECIAL MASTER: An error in estimating the value of property would not affect the discharge one way or the other, you understand that.

MR. LOVE: It is merely a matter of opinion."

(P. 26, Lines 9 to 12, R. T.)

"A I looked at those lots and made some inquiries, and they were not worth—(interrupted)

MR. LOVE: Objected to on the ground that it is a conclusion and also hearsay.

(Testimony of Frank Kennedy)

THE SPECIAL MASTER: I will let it go in, but it is of very little value and I don't know whether I will consider it at all or not; I may rule it out entirely later on."

(Lines 17 to 23, P. 30, R. T.)

I talked with the owner of the encumbrance and he said that he would be glad to take less than $1,000.00 an acre for it. I made an investigation from a real estate man in the vicinity, and he said that there was no demand for property of that kind in October, 1930. My real estate experience has been limited, as incidental to my accounting experience. I have been asked to appraise real estate in one or two instances in connection with bankruptcy cases and that was only incidental in connection with bankruptcy cases. I have never made appraisals for banks or trust companies or loan organizations, in connection with making loans upon real property. In connection with my duties, I went out and investigated and ascertained what property in the vicinity of the properties in this estate sold for. I also ascertained what people asked for property in the same vicinity by inquiring of local real estate people.

"Q Did the estate realize anything out of the Downey property?

A Not that I know of." (Lines 24 to 26, P. 29, R. T.)

Testimony of Mr. Kennedy resumed (P. 30, R. T.)

The property was taken back by the holder of the encumbrance in the amount of $41,000.00. I looked at the Compton property and was of the opinion that it was not worth the amount of the encumbrance and the bankruptcy

(Testimony of Frank Kennedy)
estate never got anything out of it. I investigated the San Vicente property, being Lot 47, Tract 3722, one-half acre, and found that it was not worth the amount of the encumbrance against it. I did not make any investigation of those pieces of property already foreclosed or taken back by the owners. I investigated the property, Lot 12, Claremont Tract, and was of the opinion that it was not worth more than the amount of the mortgage. The estate never got anything out of it. I investigated the Inglewood lots and decided to quitclaim same to the encumbrance holder for $50.00. I investigated the property known as Lot 174, Tract 180, the Cudahy property, and was of the opinion that there was no equity in the estate. Same is true of the Azusa Orange Grove. Out of all of the properties listed by the bankrupt there was nothing recovered except $50.00 from quitclaim deed on one of the properties.

There were no books of account turned over by the bankrupt. I made a demand for such books. I was not able to realize anything from the item of assets: "Memberships", $2,185.00, and was never able to secure or find any of the item "Furniture and Fixtures and Equipment", $2,257.70. No stocks or bonds ever came into the Trustee's possession, with the exception of some stock in an investment company in Huntington Park, for which we received something like $50.00. I found that these stocks and bonds were already pledged to other people for loans, and I found that there was no equity in the estate above said loans. I personally made up the typewritten report, being Objecting Creditors Exhibit 5. (P. 39, R. T.)

TESTIMONY OF E. A. WELCH (P. 39, R. T.)

I am in the research business and am the owner and manager of the Pioneer Title & Research Company. I am engaged in researching property and I made an investigation of the property in the names of Ralph L. Stephens, Claire M. Smith, Bertram Stephens and others at the request of the Trustee in Bankruptcy. The Report that I made for Mr. Wells, the Trustee in Bankruptcy, was compiled from the records of the County Recorder's office and of the County Assessor's office.

(It was thereupon stipulated that certain records and attachments need not be read into the record in their entirety and that only the dates and amounts and names of plaintiffs and defendants be read.)

Whereupon, Mr. Dechter read the following:

"MR. DECHTER: That on November 1, 1930, there was an attachment levied in the Superior Court action No. 311,199, entitled: "Lydia Pigott, Plaintiff, vs. Ralph L. Stephens, et al.; amount, $8,329.38; recorded in Book 10407, page 172 of Official Records of Los Angeles County." Also, a writ of attachment filed October 28, 1930, being Superior Court case No. 310,952, entitled: "American Pipe and Steel Corporation, Ltd., Plaintiff, vs. Ralph L. Stephens, et al., $3,867.50, recorded in Book 10410, at page 119, Official Records of Los Angeles County." Also, a writ of attachment filed on Oc-

tober 24, 1930, being Superior Court case No. 310,811, entitled: "Oil Well Supply Company, Plaintiff, vs. Ralph L. Stephens, et al., $3,245.39," and recorded in Book 10380, at page 176, Official Records of Los Angeles County, California." (P. 41, Lines 4-18 incl., R. T.)

Testimony of Mr. Welch resumed.

I compiled the property search and report, No. S-3062-A, dated November 19, 1931, at eight o'clock A. M., which shows that in Book 10263, at page 301 of Official Records appears a grant deed dated August 6, 1930, and recorded September 23, 1930, executed by George J. Davies and Julia Davies, his wife, to Bertram W. Stephens and Isabelle Stephens, husband and wife, as joint tenants, covering Lots 584 and 639, Tract 2080, as per Book 22, page 162 of Maps, and on page 2 of said property search and report appears a grant deed dated August 27, 1930, and recorded September 27, 1930 in Book 10346 page 86, Official Records, at the request of grantee, Security-First National Bank of Los Angeles to Oscar A. Stephens, a married man, conveying Lots 311 and 312, Tract 6666, City of South Gate, Sheets 1, 2 and 3; and on page 6 of said report appears an abstract of judgment, recorded in Book 10501, Page 91, Official Records of Los Angeles County, Superior Court case No. 310,811, entitled "Oil Well Supply Company vs. Ralph L. Stephens, et al., $3,245.39".

TESTIMONY OF MR. W. P. DAVIS (P. 43, R. T.)

I am an adjuster for Mr. Wells; have been so engaged for about two and one-half years, handling various bankruptcy cases as an adjuster. I did some work on the Ralph L. Stephens estate. I made an investigation concerning the property listed in the schedules and found that the Downey property showed in the name of Oscar A. Stephens and showed a foreclosure. I also found that Oscar A. Stephens owns Lots 16, 17, 18, 19, 20, 21 and 22, Block K, Tract 3209; also that Lot 47, Tract 3722, stood in the name of Claire M. Smith. Same is true of the south half of Lot 12, Claremont Tract.

"THE SPECIAL MASTER: I think the fact that the bankrupt gave an exaggerated value in his financial statement on this real estate, that in itself is not sufficient to deny his discharge. We are all, at times, inclined to exaggerate the values of our properties, and especially since there have been changes in the condition of the times. It might have been worth considerably more at the time of the making of that statement, and not be worth anything today."

(Lines 14 to 21, P. 47, R. T.)

TESTIMONY OF FRANK KENNEDY RESUMED ON CROSS-EXAMINATION

(P. 50, R. T.)

Mr. Stephens turned over his deeds and correspondence, but no books or records of any kind. He never told me that he had turned those records over to Mr. Laugharn. I never got any books or records from him. Mr. Stephens stated that his books had been damaged or destroyed by a fire.

TESTIMONY OF RALPH L. STEPHENS RESUMED ON DIRECT EXAMINATION

(P. 52 (R. T.)

The 400 shares of Emsco Derrick & Equipment Company stock which I show among my assets in the financial statement, Objecting Creditors Exhibit 2, is the same as the 400 shares of Emsco Derrick & Equipment Company stock shown on Objecting Creditors Exhibit 4, as being of the value of $4800.00, and was included in item No. 8 on the statement. There was nothing in the financial statement, Objecting Creditors Exhibit 2, to show that at the time of said statement said stock had been pledged. The 50 shares of Transcontinental Air Transport stock listed on Objecting Creditors Exhibit 4 was sold by the Bank of Inglewood, which held it as a pledge, and is the same as that mentioned on page 3, item No. 8, Objecting Creditors Exhibit 2. Said stock was not sold before October 4, 1930, by the Bank of

(Testimony of Ralph L. Stephens)

Inglewood. The Emsco Derrick & Equipment Company stock had been pledged with the Union Indemnity Company about a year or two before I made the statement, Objecting Creditors Exhibit 2, and was before I made the statements to both the Baash-Ross Tool Company and the State Oilfields Supply Company. I had also pledged with the Union Indemnity Company forty-odd shares of City National Bank stock, which is shown on Objecting Creditors Exhibit 4 and on Objecting Creditors Exhibit 2. There is no mention made in the statement, Objecting Creditors Exhibit 2, that said forty-odd shares of City National Bank stock had been pledged with the bonding company, Union Indemnity Company, and no mention was made of such fact in the statement given to the State Oilfields Supply Company to the effect that said stock had been placed or pledged with the bonding company. The statement that I prepared for the Baash-Ross Tool Company in March, 1930, was made from my books and such records as I had kept. My secretary, Miss Smith, kept my books up until the time I left the Conservative Mortgage Company. The fire took place in January, 1931. I was served on or about October 30, 1930 with summons and complaint in Superior Court case No. 311,199, entitled "Lydia Pigott, Plaintiff, vs. Minch Petroleum Corporation, Ltd., et al, defendants". I transferred the pink slip to a Studebaker, license No. 608,064, to B. W. Smith about said date.

(There was offered in evidence a telegram from the Motor Vehicle Department, as Exhibit No. 8.)

(Testimony of Ralph L. Stephens)

B. W. Smith is the brother of Claire M. Smith, my secretary.

(There was offered in evidence as objecting creditors Exhibit 9 the summons and complaint in case of Lydia Pigott, Plaintiff, vs. Minch Petroleum Corporation, Ltd., et al, Defendants.)

I remember receiving a few demands from the Baash-Ross Tool Company for payment of my account, prior to the time of making the transfer of that automobile. I transferred the pink slip to said automobile to Mr. Smith because he advanced me $1500.00 in cash I used for the payroll. It was all advanced in that time. I did not put the $1500.00 in cash in any bank account. I had a bank account at the time. I don't know where Mr. Smith got the $1500.00. I had three bank accounts at the time I received the $1500.00. I had a small account at Walnut Park, one at Lynwood, and one at the City National Bank. I have issued checks on those bank accounts for labor, equipment and other things. I continued driving said automobile after I gave Mr. Smith the pink slip until the Sheriff took the car from my possession on or about November 7, 1930 in said Superior Court action 311,199.

(It was stipulated that a third party claim was filed by Mr. Smith in said attachment action; that a bond against said third party claim filed, and that no action was ever taken by Mr. Smith on that bond or against the Sheriff for conversion, or for the recovery of said automobile.)

(Testimony of Ralph L. Stephens)

I do not know what the item of $5,000.00 of furniture and fixtures and equipment shown on the statement, Objecting Creditors Exhibit 2, means, unless it be the piano and some personal furniture. I do not know what the word "equipment" means in said statement. I never had that much furniture. I had some furniture at my office on Sixth Street, but it was worth about $550.00, and exclusive of the piano there was only about $1200.00 to $1500.00 of my household goods, or a total of about $1700.00, outside of the piano, which was worth about $1500.00, making a total with the piano of $2700.00 to $3000.00. Bertram W. Stephens is my brother. I have placed property belonging to me in the name of George J. Davies. (P. 73, R. T.) Mr. Davies was the manager of the finance company, working under me. I remember my brother, Bertram Stephens, testifying that he owned no property belonging to him. I do remember my brother testifying that he owned no real property at all. At the time of the filing of the petition in bankruptcy, I held a note signed by George J. Davies, who is the same person I used as a dummy on different occasions. I remember having certain properties on Long Beach Boulevard placed in the name of Claire M. Smith, Bertram W. Stephens and George J. Davies. A grant deed to Lots 311 and 312, Tract 6666, recorded September 27, 1930, to Oscar A. Stephens, as grantee, was made at my request. Oscar A. Stephens is my father.

(Testimony of Ralph L. Stephens)

(Said deed was admitted as Objecting Creditors Exhibit 10.) Outside of the forty-odd shares of City National Bank stock, which I had pledged with the Union Indemnity Company, I had disposed of all my other bank stocks in the year 1930. Outside of my home on Flower Street, all of the real properties listed on Objecting Creditors Exhibit 4, and on the statements to the Baash-Ross Tool Company and the State Oilfields Supply Company, stood, during all of said times, in the names of dummies. I filed a homestead, above the encumbrance, on my home. I advised Mr. Laugharn, and I advised you prior to January, 1931, when I gave you Exhibit 4, that the Downey property, and practically every piece of property I owned was foreclosed on or was being foreclosed on.

"Q Do you remember when you turned over this list to me, that I went over this property to determine which had been foreclosed and which was in process of foreclosure, so that I could secure the necessary restraining orders on foreclosures.

A Yes, after it was too late."

(Line 4, P. 80, R. T.)

The Long Beach Boulevard property was deeded back to the holder of the encumbrance in January or February of 1931, with an option to buy it back in six months.

CROSS EXAMINATION OF RALPH L. STEPHENS
By Mr. Love, Attorney for Bankrupt
(P. 83, R. T.)

In 1930, I was President of the Lynwood Bank and President of the Conservative Mortgage Company, and had a one-third interest in the Conservative Petroleum Company. I was called upon the guarantee obligations of the Conservative Petroleum Company on eight or ten different occasions, one of them being the Baash-Ross Tool Company's. I was to have a one-third interest in the Conservative Petroleum Company and the return of all moneys advanced by me. Objecting Creditors Exhibit 2 was made out because they wanted more detailed information than there was on Objecting Creditors Exhibit 1. Exhibit 2 was turned over to Mr. Neely of the Baash-Ross Tool Company. I went over each deal and showed the property contained in the statement to Mr. Neely. I guaranteed the account of the State Oil fields Supply Company and furnished them, through Mr. Dechter, my Financial statement, Objecting Creditors Exhibit 3, in order to induce them to give an extension of time on the account. (P. 86, R. T.) Also, the Baash-Ross Tool Company delivered materials after I made the financial statement.

"Q Did you then have any further dealings with Mr. Dechter or the Baash-Ross Tool Company concerning the particular property described in these financial statements?

A Only to spend about two hours with Mr. Neely, going over the property.

erty, and that it was worth the amounts set forth in these financial statements?

A Yes.

Q That is, the amount of $360,000.00, is that the total net worth? A No, not that much.

Q It is $258,845.99?

A Well, if my oil holdings were worth anything I considered I was worth even more than that, and it did not include that, did not include those.

Q BY MR. DECHTER: You did include some in there?

A I did not include those in there.

Q BY MR. LOVE: Now, after you furnished this financial statement to the Baash-Ross Tool Company, they did furnish to the Conservative Petroleum Company certain equipment?

A Yes.

Q And thereafter you were made a party defendant in certain suits? A Yes.

Q Do you remember in particular this transaction about the automobile at which a hearing was had upon an order to show cause on some third party claim before Hon. Rupert B. Turnbull?

A Yes.

Q And Mr. Smith appearing there and laying claim to that automobile? A Yes."

(Line 10, P. 87 to Line 4, P. 90, R. T.)

"Q No, after that, Mr. Dechter approached you or called you up and asked you to come in and consult about a friendly receivership?

A He and Mr. Laughharn together.

Q And Mr. Laugharn was appointed receiver of the Conservative Petroleum Company?

MR. DECHTER: I object to it on the ground that it is incompetent, irrelevant and immaterial and is not the best evidence.

THE SPECIAL MASTER: Overruled.

A That is my understanding.

Q Did you at that time turn over to Mr. Laugharn the books, papers and records and things of value that you had?

MR. DECHTER: Objected to, incompetent, irrelevant and immaterial, and I want to know what books and records they were.

THE SPECIAL MASTER: . Objection overruled. Answer the question.

MR. LOVE: Just tell the Court what happened.

A I think I had a meeting and Mr. McIntosh and Mr. Minch were there, and they agreed that if I would sign up for the Conservative Mortgage Company and the Conservative Petroleum Company and myself and would come in and work with Mr. Laugharn on a salary of $100.00 a week and help straighten out the affairs of the Conservative Petroleum Company and my own affairs, as well as those of McIntosh and Minch, they would not bring the bankruptcy proceedings against me, and I signed up to that effect, and I went to Mr. Laugharn's office and 'warmed a chair' there in most instances.

Q How long were you there?

A Five or six weeks, and arranged for $2500.00 on some of my securities at the United States National Bank.

(Testimony of Ralph L. Stephens)

Q You got that from Mr. Laugharn?

A With no reflection against the young man, I was butting my head against a stone wall, with no reflection against young Goggin, who knows nothing about an oil well—

MR. DECHTER: I object to that.

THE WITNESS: Well, I called all of my creditors together and offered to make an assignment, offered to assign over all of my assets, and Mr. Dechter here was the only one who would not agree to it, and could have avoided a lot of these lawsuits.

MR. DECHTER: We can't spend all day going into that alone, and I can follow the assets.

MR. LOVE: It is all very material, because there has been a lot of comment about what was done with this man's property, and Mr. Laugharn and Mr. Dechter put this man into receivership and then couldn't work it out, and then they tried to 'pass this hot potato' back to him, and this property all went under foreclosure while they were sitting idly by.

THE SPECIAL MASTER: Proceed. You will have to make your objection to each question, as and when asked, if you desire to object.

Q BY MR. LOVE: Go ahead and state what was done with this property. Did you turn it over to Mr. Laugharn?

A Yes, these trust deeds and everything he asked me to turn over."

(Line 16, P. 90 to Line 24, P. 92, R. T.)

"Q Now, it is set up in the Specifications of Objection to your discharge that there was the transfer of

certain property to your father Oscar Stephens, Lot No. 1, Tract No. 1290; and to Bertram Stephens, Lots Nos. 16 to 22 inclusive of Tract No. 3209; to Claire M. Smith, Lot No. 47, Tract No. 3722 and the South half of Lot No. 12, Claremont Tract; also to Claire M. Smith, Lots Nos. 132 and 133, Tract No. 6794; and to Bertram Stephens, the SE¼ of the NW¼ of the SW¼ of Sec. 3, Township 1 South, Range 10 West. I will ask you if that was your property?

A It was.

Q In the names of those people? A Yes sir.

Q Did you have deeds for those particular pieces of property back from those grantees? A Yes, I did.

Q. And you turned over those deeds to the Trustee in Bankruptcy? A Yes sir.

Q Explain to the Court—first, let me ask you, did you include these properties in your financial statement made for the Baash-Ross Tool Company A Yes.

Q And you always represented yourself to be the owner of those properties? A Yes.

Q Now, explain to the Court the reason for carrying title to those properties in that manner.

MR. DECHTER: Objected to, incompetent, irrelevant and immaterial and calling for the conclusion of the witness.

MR. LOVE: He knows why he did that.

THE SPECIAL MASTER: Overruled. Answer the question.

A Well, for about two years there I was in the bank, and any deals I had in the real estate business and the Country Club, why, we handled that through the

real estate company, and if I went into anything, I had been there so long with my father, if I went into something it seemed that the price would go up and everybody seemed to think there was something wrong, and I would put these properties in the names of others in order to avoid that, because everybody would want to raise the price; and I always had the deed, at the moment the escrow was made, in my possession.

Q Now, if you know of your own knowledge what books you turned over to Mr. Laugharn, Mr. Kennedy or any of these other men after the property was taken from you by the Receiver?

A I turned over whatever records and books they asked for, and I think that was after July.

Q You kept books of account?

A Yes, either by check book or some record in some form of all our transactions, and I went over every item with them.

Q What did you turn over to Mr. Laugharn?

A At the time he was appointed Receiver I turned over the deeds and those records of all real estate and bond holdings and stocks, I turned those over to some lady in Referree Moss' court, and the rest of the records I had I turned over to Mr. Kennedy.

Q You mean of your own personal records, or the Conservative Petroleum Company?

A Both mine or of that company either; but, of course, most of those books were kept at the field office by Mr. Minch, on the Conservative Petroleum, in Mr. McIntosh's office.

(Testimony of Ralph L. Stephens)

Q Who made out those financial statements?

A Miss Smith, in most instances.

Q BY THE SPECIAL MASTER: You told her what to put in the financial statements; she did not make them up from the books?

A Well, from our records and deeds and holdings.

MR. LOVE: I don't think there is any dispute about that, he can justify the financial statement, anyway."

(Line 22, P. 93 to Line 16, P. 96, R. T.)

Miss Smith made out the financial statements from my records and deeds and holdings.

REDIRECT EXAMINATION OF MR. STEPHENS
(P. 96, R. T.)

I have examined the list of stock and bonds on Objecting Creditors Exhibit 4. They were all pledged at the time the statements were made and furnished to the Baash-Ross Tool Company and the State Oilfields Supply Company. (P. 97, R. T.) I turned no records over to Mr. Laugharn, outside of the notes and trust deeds, and subsequently to the filing of the petition in bankruptcy, when I was examined in Referee Moss' Court.

"Q What else did you turn over to Mr. Laugharn?

A A detailed statement of my mortgages and properties, and I went over it there with Mr. Goggin for many long hours looking over it.

Q The first time you ever gave a list of these properties standing in the name of Claire M. Smith, Bertram Stephens and Oscar Stephens was when you made up

(Testimony of Ralph L. Stephens)

this list here, or had Miss Smith make up this list, Exhibit No. 4; is not that a fact?

A No sir.

MR. LOVE: I object to that on the ground that the bankrupt's schedules show that I listed all of those in there.

Q But you never made it known or advised Mr. Laugharn, as a matter of fact, while he was Receiver in Equity, or me while I was his attorney as Receiver in Equity, that you owned any of these properties standing in the names of Claire M. Smith, Bertram Stephens or Oscar Stephens, is not that a fact?

A He knew everything I had.

Q You did not tell him that you owned these pieces of real property standing in the name of Miss Smith?

A Yes, I told Mr. Goggin about them and we went out and examined them and tried to work out something on them.

Q Is it not a fact that the first time you ever revealed that fact was when you turned over these deeds to Mr. Kennedy?

MR. LOVE: I object to it on the ground that it has been asked and answered.

THE SPECIAL MASTER: Sustained."

(Line 2, P. 98 to Line 5, P. 99, R. T.)

I turned over to Mr. Dechter a small black loose-leaf note book that had description of the Downey property on the first page, description of the Compton property on the next page, and so on down the line on the following pages, with descriptions of each piece of real property. Said little black book merely contained de-

(Testimony of Ralph L. Stephens)

scription of property, what I valued the property at, yearly income, and amount of taxes I had been paying yearly. It did not contain items like "January blank, 1930, received from tenant so and so, for flat so and so, so much rent"; nor did it contain any information that on "January blank, I issued check to so and so with relation to a certain piece of real property".

"A Yes, but I had turned over my deeds to you at Referee Moss' court before that, and my records, books and records, over to Referee Moss' court before that."

(Line 24, P. 101, R. T.)

The majority of my holdings were vacant. I never turned over any checks or check stubs to Mr. Laugharn. I cannot say I turned over any checks or check stubs to Mr. Wells or Mr. Kennedy, his assistant. (Pp. 100-101, R. T.)

RECROSS EXAMINATION OF MR. STEPHENS (P. 103, R. T.)

The majority of my real property was encumbered when I turned them over to Laugharn with both trust deeds and mortgages. I do not recall having any clear properties at all. Most of the properties were unimproved.

"Q Did you have any piece of property in particular that made up the majority of the representation here as to your real estate consisting of $266,000.00 odd dollars, or was that a great many parcels of property?

A It was a great many parcels of property.

(Testimony of D. F. Culver)

Q At the time you made this financial statement you were honest in your belief that your net worth at that time was two hundred fifty-eight thousand odd dollars?

(Objection overruled and exception allowed)

A Yes."

(Line 3, P. 103 to Line 1, P. 104, R. T.)

TESTIMONY OF D. F. CULVER
(P. 108, R. T.)

After graduating from college, and for the last six years, I have been generally engaged in the real estate business, and more particularly in the management of real properties, working for such companies as the Pacific Mortgage Guaranty Company, the California Trust Company, John M. C. Marble Company, the Trust Department of the Security-First National Bank, and various concerns. I was doing that work in 1930 in Los Angeles and vicinity.

"Q BY MR. LOVE (On Voir Dire): Did you make an appraisal of this property in 1930? A. No.

MR. LOVE: That is all. I would ask that the witness be dismissed, then.

Q BY MR. DECHTER: Now, Mr. Culver, what would you say—

(Testimony of D. F. Culver)

MR. LOVE: Let the Court rule on my objection.

THE SPECIAL MASTER: I will overrule it."

(Line 11, P. 110 to Line 19, P. 110, R. T.)

I examined the property described as Lot 1, Tract 1290, being 15 acres, at Downey. In my opinion the reasonable market value of said property during the months of September or October, 1930, was $30,000.00.

"THE SPECIAL MASTER: And what were the encumbrances against it?

MR. DECHTER: $41,940.00, and his statement here shows it as being valued at $85,000.00.

THE SPECIAL MASTER: In the statements furnished to the company, these real estate holdings are not separately listed?

MR. DECHTER: No, but on Exhibit No. 4 he lists them the same way, that is, real estate—stocks and bonds, $250,400.00, and he itemizes them at the bottom of the statement, showing the same amount, $250,400.00 and then shows an itemized list of what it was made up of, and that was this property.

THE SPECIAL MASTER: But that is not a part of this financial statement.

MR. LOVE: No, and that is why I am objecting to it.

MR. DECHTER: But that is in the record and this is in January, just three months later."

(Line 24, P. 110 to Line 15, P. 111, R. T.)

EXAMINATION OF RALPH L. STEPHENS BY SPECIAL MASTER

The $41,940.00 encumbrance against Lot 1, Tract 1290, was made up of $29,000.00, first, to the man I bought the land from, and $15,000.00, second, to the Associated Oil Company. I paid $41,000 for the property about six or seven years ago, $29,000.00 or $30,000 in the form of a mortgage, and about $12,000.00 to $15,000.00 in cash. On the piece of property valued at $85,000.00, and which has $41,940. encumbrance on it, I paid in about $12,000.00 to $15,000.00 in cash. I have no checks to show for it. The Compton property, with the $3000.00 encumbrance, I paid $4500.00, and put in about $1500.00 in cash. On the piece of property in San Vicente, valued at $3150.00 and encumbered for $1350.00, I paid the difference in cash. Lot 7, Oaks Tract, valued at $12,-500.00, was taken in on a trade. I traded an equity in the property at Walnut Park for it. I put no cash in the property. This Lot 187 and 188, except the west fifty-two feet of Tract 3233, Long Beach Boulevard, which I valued at $85,000.00, and which shows encumbrances of $29,900.00, I had put in about $17,500.00 at the time. The individual I purchased the property from had the mortgage. This Florence Street property is my home. There was a $6000.00 mortgage on it, and I placed a second trust deed on it, and the difference was cash. I put no cash in the Claremont property. I traded some equities in some houses in South Gate for it. The Azusa property, valued by me at $14,000.00, with $6,-600.00 encumbrance on it, was also a trade.

"THE SPECIAL MASTER: Looking back and trying to appraise this property now, I do not believe it is hardly a fair method of appraising it, because when you look back you naturally come to the conclusion that this property is not worth anything, but whether it is a fair way or not is the point. His judgment of what it was worth at that time would be warped by what it was worth since that time. We would say that almost anybody might know that property is worth nothing now, but that it may have been worth considerable at that time."

(Line 14, P. 115 to Line 4, P. 116, R. T.)

DIRECT EXAMINATION OF D. F. CULVER, CONTINUED (P. 116, R. T.)

In my opinion, Lots 187 and 188, Tract 3233, Long Beach Boulevard were in September and October of 1930 worth $20,000.00.

REDIRECT EXAMINATION OF RALPH L. STEPHENS (P. 117, R. T.)

"Q The Downey property, $41,940.00, when did that encumbrance go on, when did you place that encumbrance on that property?

A Well, when I purchased that property he took back about $30,000.00.

Q Who did you purchase it from?

A Mr. Thompson, and he took back a first mortgage.

Q A first mortgage for $30,000.00 when you purchased it from him? A Yes.

(Testimony of Ralph L. Stephens)

Q How much did you pay him in cash at that time?

A I don't recall, but we carried it at between $12,000.00 and $15,000.00 that I had put in the property.

Q What did you pay him at that time, what was the purchase price?

A It was somewhere between $37,500.00 and $40,000.00.

Q And of that price you gave back a mortgage for $30,000.?

A That is right.

Q And when did you buy that?

A I think it was 1925 or 1926, along in there.

Q When did you put the second encumbrance on it?

A As I recall, it was the early part of 1929 or some time in that year.

Q And from whom did you get that money?

A The Associated Oil Company.

Q In what way?

A By a loan they made me in the amount of $15,000.00.

Q What was the occasion for that?

A To get a lease on this property. It has always been a prospective oil area out there, in that section.

Q. Did you give a lease on this property? A. Yes

Q Did you give them a lease on any other property at the same time? A No.

Q Did you put up any other security for the $15,000.00?

A No.

Q Did you have any agreement with them in regard to that loan? A None.

(Testimony of Ralph L. Stephens)

Q Were they to be repaid that money out of oil?

A No, that was to be paid when the trust deed came due at the end of three years.

Q That land had oil possibilities?

A Yes, always had.

Q Was that why you bought it in 1926? A No.

Q Did it have that possibility then?

A I bought it for developments, and it was to establish a country club.

Q That was near the Rio Hondo Club you were manager of?

A Well, I was president of the company.

Q You promoted it?

A If you want to call it that.

Q Calling your attention to Lots 187 and 188, except the west fifty-two feet, of Tract 3233, Long Beach Boulevard, valued at $85,000.00; how much did you pay for that property?

A I paid $46,000.00 for it?

Q To whom did you pay the $46,000.00 for it?

A I don't recall the name of the people.

Q Did you buy it from more than one? A No."
(Line 6, P. 118 to Line 6, P. 121, R. T.)

I paid $46,000.00 for Lots 187 and 188, except the west fifty-two feet, of Tract 3233, being the Long Beach Boulevard property. At the time I bought the Long Beach Boulevard property, I gave back an encumbrance of $35,000.00. I bought the Long Beach Boulevard property in 1929. I might have bought it in 1930.

(Testimony of Ralph L. Stephens)

I bought Lots 16 to 22, Tract 3209, Compton, in either 1928 or 1929. I paid $4,500.00 for it, and gave back a mortgage of $3000.

I bought Lot 47, Tract 3722, San Vicente, about five or six or seven years ago. The encumbrance of $1347.76 represents the balance due on the original contract of purchase.

At the time I started in dealing with the Baash-Ross Tool Company, and when I went into the oil business in Venice, all of these encumbrances had been placed on all of these different properties. (P. 127, Line 14, R. T.)

"BY MR. DECHTER: I call your attention to your testimony the other day, about notes and trust deeds that you turned over to Mr. Laugharn when he was receiver in equity. Is it not a fact that the notes and trust deeds you refer to were notes and trust deeds that you had pledged with the Maco Construction Company as security for your guarantee to them?

A I couldn't say about that. I know that Laugharn had the trust deeds and notes which I made arrangements, with Mr. Goggin, to get a loan on them at the bank.

Q Is it not a fact that prior to the filing of the receivership in equity you had placed with the Maco Construction Company certain notes and trusts deeds and other miscellaneous securities, stocks and so forth.

A I had.

Q And that you had also pledged similar securities with the Petroleum Equipment Company? A Yes

Q And also with the Oil Well Supply Company?

(Testimony of Ralph L. Stephens)

A I don't know, but I supplied collateral to most of them, outside of Baash-Ross Tool Company, and they didn't ask for it.

Q And is it not a fact these notes and trust deeds and miscellaneous unsecured notes that Mr. Laugharn had were delivered to him by the Maco Construction Company, and not by you?

A I couldn't say about that.

Q You know that it is a fact, don't you, that you yourself personally didn't deliver any of these notes and trust deeds to Mr. Laugharn?

A Well, he had them, regardless of who delivered them to him.

Q MR. DECHTER: Will you read the question to the witness, Mr. Bowman?

(The Reporter read the question, as follows: "Q—You know that it is a fact, don't you, that you yourself personally didn't deliver any of these notes and trust deeds to Mr. Laugharn?")

THE SPECIAL MASTER: Did you deliver them to him?

A I can't say, but he had quite a few different notes and trust deeds, I can not testify to the specific ones."

(P. 128, Line 10 to P. 129, Line 24, R. T.)

Prior to October, 1930, I turned over to the Petroleum Equipment Company and the Oil Well Supply Company a number of street bonds of the City of South Gate. I owned about $13,500.00 of said street bonds. There is no mention made on the statement of these street bonds.

"Q Will you show me on this statement where any mention is made of street bonds?

(Testimony of Ralph L. Stephens)

A There would not be any mention there.

Q BY THE SPECIAL MASTER: Why not?

A Well, at the time I made this deal,—I don't know exactly when I received these bonds, but Mr. Neely, the credit man at the Baash-Ross Tool Company, came over and was cognizant of the bonds.

Q BY THE SPECIAL MASTER: No, why didn't you put them on the statement, if you owned them?

A I don't know the exact date I got them, and I probably did not have them at the time the statement was made.

Q BY MR. DECHTER: It was made on October 4, 1930?

A I don't know for sure if I had them at that time or not. I don't think I had them then.

Q BY THE SPECIAL MASTER: You said you probably did not have them, and yet you said that the Baash-Ross Tool Company knew all about the deal?

A They knew all about the deal of my putting the trust deed on the building, and we were trying to get the cash on them."

(P. 131, Lines 3 to 23, R. T.)

The memberships listed in the statement of the Baash-Ross Tool Company include the Potrero Country Club membership, which stood in the name of Leo J. Fretz. At the time I made up the statement to the Baash-Ross Tool Company, the Potrero Country Club membership standing in the name of Leo J. Fretz had been pledged by me with the Bank of Inglewood.

(Testimony of Ralph L. Stephens)

RECROSS EXAMINATION OF RALPH L. STEPHENS

"Q Were you called upon to make a financial statement?

A Yes sir.

Q By whom were you called upon?

A Mr. Seely of the Baash-Ross people.

MR. DECHTER: That was all gone into the other day here.

THE SPECIAL MASTER: Don't go into anything that has already been gone into. We have wasted enough time here now.

MR. LOVE: All right, but I want to show that they did not reply upon that statement.

MR. DECHTER: The bankrupt has testified that they insisted upon having the statement.

THE SPECIAL MASTER: Proceed.

Q BY MR. LOVE: What happened then, after you gave this financial statement to Mr. Dechter?

MR. DECHTER: No, he didn't give it to me.

Q Who did he give it to?

A Mr. Neely, and we then went out and looked at the property.

Q And that was all after you gave this financial statement?

A Yes, and I took him to the bank and talked to Mr. Peterson of the bank, the manager of the bank.

Q The total valuation you set forth in your financial statement of your real and personal properties, is that the true and correct representation as to the values of these properties, in your best judgment?

(Testimony of Frank Kennedy)

MR. DECHTER: I object to it on the ground that it calls for a conclusion of the witness.

MR. LOVE: He is entitled to testify to the value of his own property.

THE SPECIAL MASTER: Yes. Objection overruled.

A Yes."

(Line 3, P. 135 to Line 11, P. 136, R. T.)

REBUTTAL TESTIMONY OF FRANK KENNEDY (P. 144, R. T.)

I never received any books of account from Mr. Stephens, nor any checks, check stubs, or cancelled checks. I made a demand for them on Mr. Stephens. I also made a demand for all of his records, papers, and furniture and fixtures and everything. He said he had no furniture. At that particular time, we were in his father's office, and he said the furniture belonged to his father. The unrecorded deeds to Claire M. Smith, Bertrum W. Stephens, and Oscar Stephens were received by me after the election of the Trustee, when I went to call on Mr. Stephens, the bankrupt, at the request of the Trustee. I never received any records showing in chronological order the receipts and disbursements of the bankrupt. I have been doing accounting work for twenty years, and after examining the income tax returns for the year 1930 and the year 1931, I would say that the bankrupt would have to have some kind of a record from which to take those figures, in order to make those statements up. I was not given any records by which I could prepare such income tax returns.

TESTIMONY OF RAPHAEL DECHTER
(P. 147, R. T.)

Regarding the loose leaf black leather book which was given to me by Mr. Stephens at the time I examined him at Referee Moss' court, it was about six inches square, being a loose leaf book, and had about six or seven pages written on. These six or seven pages, at that time, were typewritten, and not in ink or pencil, and they contained a legal description of the properties, the location or address, the values, according to the bankrupt's valuation, and showed the total amount of annual income, the total amount of taxes, and nothing else. The notes and trust deeds that were turned over to Mr. Laugharn were not turned over by Mr. Stephens but by the Maco Construction Company, a creditor, with whom the same had been pledged by the bankrupt, pursuant to an arrangement where I, on behalf of the Baash-Ross Tool Company and the State Oilfields Supply Company had agreed to release certain attachments to the Receiver in Equity of the Conservative Petroleum Corporation, Mr. Laugharn, and that they would, in turn, release the pledged notes and trust deeds to Mr. Laugharn as Receiver in Equity of the Conservative Petroleum Corporation. Two other companies holding pledged securities, the Petroleum Equipment Company and the Oil Field Equipment Company, agreed also to release their collateral to Mr. Laugharn, as Receiver in Equity of the Conservative Petroleum Corporation, but they refused to go through with their agreement. I examined Mr. White under supplementary proceedings on the judgment recovered by

the Receiver in Equity against him, and found that he was judgment proof and had been judgment proof for quite some time.

TESTIMONY OF MISS CLAIRE M. SMITH (P. 150, R. T.)

I kept the loose leaf bookkeeping system which contained a record of all properties owned by Mr. Stephens, the values of the properties, the encumbrances on them, the notes and accounts payable and notes and accounts receivable. It also contained the revenues derived and expenses in connection with any of the properties he owned. The record of moneys received and disbursed was kept by me in the check book. At the beginning of 1931, I turned over all books, cancelled checks, check stubs, and the loose leaf book to Mr. Stephens, when he moved out of the Conservative Mortgage Company's offices. I kept no book showing receipts and disbursements day by day, except in the form of the check book. This was entered into the little book at the end of each month and as to the transaction to which it referred.

THE SPECIAL MASTER: I think, without doubt, this young man has been guilty of some high financing, I do not think his conduct along that line has been what it might have been, but as to the Objection to the Discharge, it is doubtful in my mind whether a man's exaggerated opinion of the value of his real estate is a reason for the refusal of his discharge. Most people are prone to give too high a value to their own property, and his sincere opinion of the value of it might range to almost its double value, and it would be hard to hold that against

(Testimony of Miss Claire M. Smith)

him. I am inclined to think that people indulge in extravagant opinions in regard to real estate; we are all inclined to do that. I have in mind a piece of property, which the owner honestly thought was worth $75,000.00 a few years ago, and now it is doubtful if it would be worth $600.00; the property never did have that value, but he thought it was of that value. That might be the case here, and especially a man engaged in the business this man was, he undoubtedly put an exaggerated value on his real estate holdings; but I do not believe that provision of the law was made to cover circumstances of this nature. I believe he was honest enough in listing his real estate. That is, I do not mean that it was described and listed in this statement, but in a later statement he did list it, and people furnishing credit could easily have gone out and placed a value on that property, and from the testimony I understand they did do that in some instances and they did not have to rely on his statement, so that the doctrine of caveat emptor applied to some extent. However, it is to be presumed that a man will exaggerate somewhat the value of his own holdings, especially when they are for sale he naturally puts the price up. I can't see that this is covered under the Bankruptcy Act, and I do not believe that is what is meant by giving a false financial statement. A false financial statement is more or less applicable to a business man who lists false holdings, holdings that he doesn't have; or a man of this type who lists property or real estate that he did not own at all. But where he just exaggerates the value of it I cannot hold that to be a false statement in writing.

MR. DECHTER: What about the encumbrances, the fact that he owes, according to the financial statement, only $70,000.00, when in reality he had $114,000.00 encumbrances?

THE SPECIAL MASTER: As I gather from the testimony—I may be wrong, but he listed a lot of property under pledge, and he likewise listed the debts.

MR. LOVE: You are right about that.

THE SPECIAL MASTER: He listed the pledges and holdings and transactions, and I think he gave a fair statement of what his debts were and what his holdings were, but with a much exaggerated value on them.

MR. DECHTER: But he did not list in the financial statement this case that was pending.

THE SPECIAL MASTER: But that was in litigation.

MR. DECHTER: What about the $70,000.00 encumbrances as shown by the financial statement, when in fact it is $114,000.00 encumbrances?

THE SPECIAL MASTER: I don't remember that.

MR. DECHTER: He only shows $70,000.00 encumbrances and he actually had $114,000.00 encumbrances, and he testified that no encumbrances was placed on it after he gave the statement.

THE SPECIAL MASTER: I don't want to go into the evidence again. I think that was covered, and you did not impress that upon me at the time, and you did not say anything about that in your argument.

MR. DECHTER: But it was shown by the testimony, and is shown by this exhibit which is in evidence.

THE SPECIAL MASTER: I am making my decision and I do not want to go into an argument on that

now. As I remember the gist of the whole evidence it shows that he had an exaggerated opinion of his holdings.

MR. DECHTER: That was one of the important points.

THE SPECIAL MASTER: If you let that slip by it is too bad, because I have a fair recollection of the evidence and I have no recollection of any testimony in regard to his failure to list them.

Now, the question of keeping books is to be considered. This gentleman was engaged in the real estate business, and I don't think any of us keep books, individually, except by our check stubs. We make our income tax returns out from our check stubs, and pay our taxes and personally keep a little book of the nature referred to in the testimony, and that provision of the Bankruptcy Act is more applicable to commercial business men, and not so much to the man who casually holds a half dozen pieces of real estate. Therefore, I do not think that specification is sufficient, and I will have to hold against you on that. I think I will recommend the discharge. There may be something about the case or some of his business transactions that were a little suspicious, but they have not been presented in this hearing. I was waiting for that to be developed." (Pp. 161 to 164, R. T.)

The verbatim testimony transcribed herein has been inserted at the request of Respondent.

IT IS HEREBY STIPULATED: That the above and foregoing statement of facts may be settled and allowed as the statement of facts on appeal herein.

IT IS HEREBY FURTHER STIPULATED: That Objector's Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and the exhibit with no number, being the income tax return of Ralph L. Stephens for the year of 1929, may be deemed incorporated herein and a part hereof and that the said exhibits, as printed in the transcript of record, shall be considered as though fully herein set out at length.

Dated this 28 day of July, 1933.

Raphael Dechter
Raphael Dechter
Attorney for Objectors
Frank H. Love
Frank H. Love
Attorney for Bankrupt

Pursuant to the foregoing stipulation, the above Statement of Facts is hereby settled and allowed.

DATED: July 31, 1933.

Geo. Cosgrave
District Judge

[Endorsed]: No. 15995-C In the District Court of the United States In and for the Southern District of California Central Division In the Matter of Ralph L. Stephens, Bankrupt. Statement of Facts. Lodged R. S. Zimmerman, Clerk at 14 min past 5:00 o'clock Jul 28, 1933 P. M. By L. B. Figg, Deputy Clerk. Filed Jul 31, 1933, 5. P. M., R. S. Zimmerman, Clerk By L. B. Figg, Deputy Clerk. Law Offices Raphael Dechter 825 Stock Exchange Building 739 South Spring Street, Los Angeles Trinity 8383 Attorneys for Objectors.

[Objecting Creditors' Exhibit No. 1.]

BAASH-ROSS TOOL COMPANY
P. O. BOX 1297, -- -- ARCADE, STATION
LOS ANGELES, CAL.

Page No. 1

NOTE---Please answer ALL questions pertaining to YOUR line of business

STATEMENT

This form adopted by Los Angeles Credit Men's Association for the Oil Well Supply Division

[Emblem inscription]: Vigilantia Organized 1896 National Association of Credit Men

Corporation..

Laws of

Co-partnership..

Individual ------

Dated at Huntington Park, Calif.
Sept. 30, 1930

Firm Name Ralph L. Stephens

Address 7208 Seville Ave., Huntington Park

....

Authorized Capital ....

Period of Lease ....

What are Lease Requirements...

If Producing Company, monthly barrel production............

If Manufacturing or Jobbing, monthly sales........................

If Contracting, please see Page No. 4.

Amount of Fire Insurance $.. ....How Distributed............

....

In what company do you carry your compensation insurance? ....

Banking Connections National Bank of Lynwood Walnut Park National Bank

PARTNERS:

Name ....

Address ....

Name ....

Address ....

Name ....

Address ....

Name ....

Address ....

OFFICERS AND DIRECTORS

.... President

Address ....

.... Vice-President

Address ....

.... Treasurer

Address ....

.... Secretary

Address ....

.... Director

Address ....

Page No. 2

For the purpose of obtaining credit for goods to be sold me, or us, by you, or for any extension granted me, or us, on my, or our account with you, the following is given you as a true statement of my, or our, assets, liabilities and general financial condition: Statement as of March 3rd, 1930

ASSETS

1.	Cash on hand and in bank..........................	19,131.28
2.	Notes Receivable (Good), See Page No. 3	58,661.30
3.	Accounts Receivable (Good), See Page No. 3	....
4.	Material and equipment on hand.............. ... Less Depreciation	....
5.	Oil Land Owned in fee	....
6.	Land under lease at actual amount paid for same..	....
7.	Value of producing wells...........................	....
8.	Other Assets: Real estate, stocks, bonds, etc. (Detail on Page No. 3)................	246,203.40
9.	If manufacturing or jobbing, amount of inventory at cost or market...................	....
	TOTAL..	$323,995.98

LIABILITIES

10. Accounts Payable	Not due..........................	
	Past due	....
	Not due	

11. Notes Payable to Bank

	Past due	31,000.00
	Not due	1,314.07
12. Notes Payable to Others		
	Past due	....
13. Owing on Lease, Item No. 6		....
14. Bonds Outstanding		....
15. Chattel Mortgages, Lease Agreements, etc.		....
16. Encumbrances on Land, Item No. 5		56,073.00
17. Other Liabilities, Real Estate, Stocks, Bonds, etc. (Detail on Page 3)		....
18. Capital Stock Issued		....
19. Surplus	Net Worth	235,608.91
TOTAL		$323,995.98

Page No. 3

GENERAL INFORMATION

Approximate time to run on notes receivable (Item No. 2)

....

Approximate time to run on accounts receivable (Item No. 3) ....

Amount of notes receivable (Item No. 2) covering stock subscriptions ....

Amount of notes receivable or accounts receivable discounted or pledged at bank or elsewhere..............................

....

Amount of notes or accounts payable, secured, and how, $ ....

Detail --- Showing dates due, to whom payable....................

....

Amount of unsecured notes and accounts payable and approximate time to run various

....

Amount past due on notes payable $............Why?................

Amount past due on accounts payable $..........Why?............

Are you liable as a Guarantor or Endorser for others:....... Amount ....

Legal description of land (Item No. 5)...................................

....

Legal description of land (Item No. 6)...................................

....

Legal description of Real Estate (Item No. 8)....................

....

Stocks, bonds, etc. (Item No. 8)..

State present value of following items included in Item No. 4, Boilers.........................Gas Engines............................

Steam Engines...........................Pumps..............................

Derricks: Wood..........................Steel.................................

............Rotary Kind..............

............Outfits Size................Other Equipment ....

Largest Creditors...

....

....

References...

....

The foregoing statement has been carefully read (both the printed and written matter), and is in all respects complete, accurate and truthful. It discloses to you the true state of my (our) financial condition on the 3rd day of March, 1930. Since that time there has been no material unfavorable change in my (our) financial condition; and if any such change takes place I (we) will give you notice. Until such notice is given, you are to regard this as a continuing statement.

~~Firm Signature~~ Ralph L. Stephens

By Whom Signed..............................

Witness ....

Page No. 4

CONTRACTORS

Present Contracts:

1...

2...

3...

4...

5...

Drilling Requirements and Terms of Contracts:

1...

....

2...

....

3...

....

4...

....

5...

....

Amount of money due on completed contracts........................

From Whom........................When Payable........................

From Whom........................When Payable........................

From Whom........................When Payable........................

....

....

U. S. District Court No. 15995 C ~~1-13-33~~ Obj Crs Exhibit No. 1 Filed 1-13-33 J L I. Referee

Filed R. S. Zimmerman, Clerk at 8 min. past 4 o'clock Apr. 18 1933 P. M By L B Figg Deputy Clerk

[OBJECTING CREDITORS' EXHIBIT No. 2.]

BAASH-ROSS TOOL COMPANY
P. O. BOX 1297, -- -- ARCADE, STATION
LOS ANGELES, CAL

Page No. 1

NOTE—Please answer ALL questions pertaining to YOUR line of business.

STATEMENT

This form adopted by Los Angeles Credit Men's Association for the Oil Well Supply Division.

[Emblem inscription]: Vigilantia Organized 1896 National Association of Credit Men

Corporation..
Laws of

Co-partnership..
Individual xxxx

Dated at Huntington Park, Calif.
Oct. 4, 1930

Firm Name Ralph L. Stephens
Address 7208 Seville Ave., Huntington Park

....

Authorized Capital ....
Period of Lease..
What are Lease Requirements...
If Producing Company, monthly barrel production............

If Manufacturing or Jobbing, monthly sales........................

If Contracting, please see Page No. 4.

Amount of Fire Insurance $..........How Distributed..........

....

In what company do you carry your compensation insurance? ....

Banking Connections National Bank of Lynwood, Walnut Park National Bank

PARTNERS:

Name ....
Address ....
Name ....
Address ....
Name ....
Address ....
Name ....
Address ....

....

....

OFFICERS AND DIRECTORS

.... President
Address ....
.... Vice-President
Address ....
.... Treasurer
Address ....
.... Secretary
Address ....
.... Director
Address ....

Page No. 2

To Los Angeles, California:

For the purpose of obtaining credit for goods to be sold me, or us, by you, or for any extension granted me, or us, on my, or our account with you, the following is given you as a true statement of my, or our, assets, liabilities and general financial condition: Sept. 1, 1930

ASSETS

No.	Item	Amount
1.	Cash on hand and in bank	1,416.04
2.	Notes Receivable (Good), See Page No. 3	84,872.68
3.	Accounts Receivable (Good), See Page No. 3	
4.	Material and equipment on hand	
	Less Depreciation	
5.	Oil Land owned in fee	
6.	Land under lease at actual amount paid for same	
	Memberships	2,335.00
7.	~~Value of producing wells~~ Furniture & Equipment	5,269.15
8.	Other Assets: Real estate, stocks, bonds, etc. (Detail on Page No. 3)	266,859.39
9.	If manufacturing or jobbing, amount of inventory at cost or market	
	TOTAL	$360,752.26

LIABILITIES

10. Accounts Payable	Not due	
	Past due	....
	Not due 21,650.63	21,650.63
11. Notes Payable to Bank		
	Past due	....
	Not due 9,358.64	9,358.64
12. Notes Payable to Others		
	Past due	....
13. Owing on Lease, Item No. 6	....	....
14. Bonds Outstanding	....	....
15. Chattel Mortgages, Lease Agreements, etc.	....	....
16. Encumbrances on Land, Item No. 5	....	70,897.00
17. Other Liabilities, Real Estate, Stocks, Bonds, etc. (Detail on Page No. 3)	....	....
18. Capital Stock Issued	....	....
19. Surplus	Net Worth	258,845.99
		....
TOTAL	....	$360,752.26

Note: Foregoing is exclusive of Venice Oil Holdings.

Je 4101 McIntosh attached by California Bank

Page No. 3

GENERAL INFORMATION

Approximate time to run on notes receivable (Item No. 2) Various--30 days to year or more

Approximate time to run on accounts receivable (Item No. 3)..

Amount of notes receivable (Item No. 2) covering stock subscriptions none

Amount of notes receivable or accounts receivable discounted or pledged at bank or elsewhere $15,900.00

....

Amount of notes or accounts payable, secured, and how, $25258.64--By Stocks & Mortgage

Detail—Showing dates due, to whom payable City National Bank, Bank of Lynwood, Bank of Inglewood, Conservative Mortgage Co. and Miscellaneous

Amount of unsecured notes and accounts payable and approximate time to run $5750.63--Demand

....

Amount past due on notes payable $ none Why?..............

Amount past due on accounts payable $ none Why?..........

Are you liable as a Guarantor or Endorser for others........ Amount Approximate $39,000.00 One of three individual guarantors on Conservative Petroleum Corp. Ltd

Legal description of land (Item No. 5)..................................

....

Legal description of land (Item No. 6)..................................

....

Legal description of Real Estate (Item No. 8) Long Beach Blvd Frontage, Lots Inglewood, South Gate, Orange Grove—Azusa. (All encumbered)

Stocks, bonds, etc. (Item No. 8) Transcontinental Air, Emsco Derrick, City Nat'l Bank Pacific Star Roof, Zenda Mines & Miscellaneous, Conservative Mtg & Fin Co

State present value of following items included in Item

No. 4, Boilers........................Gas Engines ....

Steam Engines.... ....Pumps.................. ....

Derricks: Wood.............................Steel ....

............Rotary Kind..............

............Outfits Size................Other Equipment ....

Largest Creditors Banks named above

....

....

References Bank of Lynwood, Walnut Park National

....

The foregoing statement has been carefully read (both the printed and written matter), and is in all respects complete, accurate and truthful. It discloses to you the true state of my (our) financial condition on the 4th day of October, 1930. Since that time there has been no material unfavorable change in my (our) financial condition; and if any such change takes place I (we) will give you notice. Until such notice is given, you are to regard this as a continuing statement.

~~Firm Signature~~ Ralph L. Stephens

By Whom Signed.................................

Witness ....

Page No. 4

CONTRACTORS

Present Contracts:

1...

2...

3...

4...

5...

Drilling Requirements and Terms of Contracts:

1...

....

2...

....

3...

....

4...

....

5...

....

Amount of money due on completed contracts.....................

From Whom..........................When Payable..........................

From Whom..........................When Payable..........................

From Whom..........................When Payable..........................

....

....

U. S. District Court No. 15995 C Obj Crs Exhibit No. 2 Filed 1-13-33 J. L I. Referee

Filed R. S. Zimmerman, Clerk at 9 min past 4 o'clock Apr. 18, 1933 P. M By L B Figg Deputy Clerk

[Objecting Creditors' Exhibit No. 3.]

	Statement for period--Sept. 30, 1930
Cash on hand and in Bank	1,416.04
Notes Receivable (Good)	84,872.68
Memberships	2,335.00
Furniture & Fixtures & Equipment	5,269.15
Real Estate, Stocks Bonds etc	266,859.39
Total	$360,752.26
Notes Payable to Bank	21,650.63
" " Others	9,358.64
Encumbrances on Land	70,897.00
Net Worth	258,845.99
Total	$360,752.26

Ralph L. Stephens

Los Angeles, California.
October 10th, 1930.

Mr. R. Dechter,
Attorney, State Oilfields Supply Company,
825 Stock Exchange Bldg.,
Los Angeles, California.

Dear Sir:

For and in consideration of your releasing that certain attachment issued and levied out of the Superior Court of Los Angeles County in case entitled "Lydia Pigott v. Minch Petroleum Corporation, Conservative Petroleum Corporation, Ltd., et al.," No. 310071, and in consideration of your extending the time of payment by such defendants and debtors of the claim of the State Oilfields Supply Company in the sum of $2449.58, for the payment of one-half of said claim for a period of fifteen days and for the payment of the other half of said claim for a

period of thirty days, and for other good and valuable consideration, I do hereby guarantee the full payment to the State Oilfields Supply Company of such indebtedness in the sum of $2449.58 in the time aforementioned, to-wit: One-half in fifteen days and one-half in thirty days.

Notes or other evidences of indebtedness or security may be received by your client on account or in adjustment of said indebtedness and may be renewed and extended as you or your client think advisable without notice to me or without impairing my liability under this guarantee, and are hereby expressly included hereunder until finally paid. Notice of acceptance of this guarantee and all payments made or of any default is hereby waived.

In the event it becomes necessary to institute legal proceedings to enforce collection of such indebtedness from the aforenamed debtors and from me under this guarantee, I hereby agree to pay such additional sum as the Court may adjudge reasonable as attorney's fees.

R. Dechter,
Page two.
10/10/30.

In order to induce you to make such extension and accept this guarantee I hereby represent to you my net worth is the sum of $250,000.00 and I will furnish you a financial statement by Tuesday, October 14, 1930.

Yours very truly,

Ralph L. Stephens

RD:LP

U. S. District Court No. 15995 C Obj Crs 's Exhibit No. 3 Filed 1-13-33 J L I. Referee

Filed R. S. Zimmerman, Clerk at 10 min past 4 o'clock, Apr. 18 1933 P. M By L B Figg Deputy Clerk

[OBJECTING CREDITORS' EXHIBIT NO. 4.]

trustee Id (a)

J L. I.

Cash	none
Notes and Accounts Receivable	99,934.90
Memberships	2,185.00
Furniture and Fixtures and Equipment	2,257.70
Real Estate—Stocks and Bonds	250,400.00
Stock—Osgood & Turner—See per contra	19,154.71
Total Assets	410,247.45
Notes Payable to Banks	21,250.17
Notes Payable to Others	11,115.00
Encumbrances on land	114,568.37
Notes Payable—Osgood & Turner—see per contra—	19,154.71
Guaranteed Notes—	19,134.51
Net Worth	225,024.69
Total Liabilities	410,247.45

Detail: Property

Property	Value	Encumbrances	
Lot 1 Tract 1290—15 Acres Downey	85,000.00	41,940.00	Foreclosed
Lots 16 to 22 inc. Tract 3209—Compton	6,000.00	3,000.00	
Lot 47 Tract 3722—½ Acre San Vicente	3,150.00	1,347.77	
Lot 7 Oaks Tract—Pasadena Acre	12,500.00✓	4,633.13	Out
Lot 187 & 188 exc W 52′ Tr 3233—L B Blvd—	85,000.00	29,900.00	Out
Lot 336 Tract 2262—Flower St	14,500.00	10,000.00	Homestead
So half Lot 12 Claremont Tract—Pasa Duplex—	11,500.00	7,000.00	Foreclosed
Lot 132 & 3 Tract 6794—Inglewood—	7,000.00	2,500.00	
Lot 4 Block 5 La Park Tract—Marbrisa	7,250.00	5,747.47	Out
Lot 174 Tract 180—Cudahy	4,500.00	2,500.00	Foreclosed about 3 6
SE ¼ NW¼ of SW¼ of S 3 Tnsp 1 S R 10 W—Azusa	14,000.00	6,000.00	Foreclosed
	250,400.00	114,568.37	Secured Consent for Mtg Cr

Detail Stocks and Bonds

Shares		Stock	Price	Amount	Remarks
400	Shares	Emsco Derrick & Equipment	1600.00	4800.00	Feinstein sued for 17,500.00
50	"	Transcontinental Air Transport		400.00	Sold
	"	Huntington Park Oil Syndicate		2175.00	Cost Oil property in N M
100	"	Star Roof Corporation		1000.00	700.00
1064	"	Conservative Mortgage & Finance Co	6.00	15960.00	Pledged
46	"	City National Bank		10087.60	Cost P
		Installment Stocks		1602.54	Pledged
1450	"	Zenda	25¢	290.—	
				36315.14	

U. S. District Court No. 15995 C Obj Crs Exhibit No. 4 Filed 1-13-33 J L I. Referee Filed R. S. Zimmerman, Clerk, at 45 min past 4 o'clock, Apr. 18, 1933, PM. By L B Figg, Deputy Clerk.

[OBJECTING CREDITORS' EXHIBIT NO. 6.]

COPY

INDIVIDUAL INCOME TAX RETURN

For Net Incomes From Salaries or Wages of More Than $5,000

And Incomes From Business, Profession, Rents, or Sale of Property

For Calendar Year 1930

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1931

Form 1040

Treasury Department
Internal Revenue Service
(Auditor's Stamp)

Do Not Write in These Spaces
File
Code ....
Serial
Number ....
District..
(Cashier's Stamp)

Cash Check M.O. Cert. of Ind.
First Payment

$ ....

Print Name and Address Plainly Below

Ralph L. Stephens

(Name)

7208 Seville Ave.

(Street and number, or rural route)

Huntington Park	L A	Calif.
(Post office)	(County)	(State)

Occupation..

1. Are you a citizen or resident of the United States? Yes
2. If you filed a return for 1929, to what Collector's office was it sent? Los Angeles
3. Is this a joint return of husband and wife? Yes
4. State name of husband or wife if a separate return was made and the Collector's office where it was sent..
5. Were you married and living with husband or wife on the last day of your taxable year? Yes
6. If not, were you on the last day of your taxable year supporting in your household one or more persons closely related to you?..
7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change........
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support were receiving their chief support from you on the last day of your taxable year? 2

INCOME

Item and Instruction No.	Amount received	Expenses paid (Explain in Schedule F)	
1. Salaries, Wages, Commissions, etc. (State name and address of employer)			
City Natl Bank Huntington Park..........	$ 290.—	$	$..............
Conservative Mtge & Finance Co. 7208 Seville Ave H P	4380.—	....	....
I. B Crossan Co..........	100.—	....	....
G J Davies..........	50.—		
Aetna Ins Co..........	27.44	3480.75	....
2. Income from Business or Profession. (From Schedule A)..........	4847.44	1366.69	1 366 69
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)..........			....

4.	Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source		
5.	Income from Partnerships. (State name and address)		
6.	Income from Fiduciaries. (State name and address)		
7.	Rents and Royalties. (From Schedule B) 3296.27	3 296 27	
8.	Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)	24 56	
9.	Taxable Interest on Liberty Bonds, etc. (From Schedule E)		
10.	Dividends on Stock of Domestic Corporations	996 —	
11.	Other Income (including dividends on stock of foreign corporations). (State nature of income)		
	(a)		
	(b)		
12.	Total Income in Items 1 to 11		$ 5 683 52

DEDUCTIONS

13.	Interest Paid	$12 416 56	
14.	Taxes Paid. (Explain in Schedule F)	2 328 02 less Revenue	
15.	Losses by Fire, Storm, etc. (Explain in Table at foot of page 2)	....	
16.	Bad Debts. (Explain in Schedule F)	....	
17.	Contributions. (Explain in Schedule F)	....	
18.	Other Deductions Authorized by Law. (Explain in Schedule F) Land Expenses	7 005 14	
	Auto Depreciation	310 41	
19.	Total Deductions in Items 13 to 18		$22 060 13
20.	Net Income (Item 12 minus Item 19) Deficit		$16 376 61

COPY

Schedules to Be Attached to Return of Ralph L. Stephens, 1930

Item—I—Deductions:			$3 480 75
Salaries paid to employes		$1 248 00	
Office expense		79 90	
Advertising		3 24	
Rent		165 44	
Entertainment—club expenses, traveling expenses accrued in promotion of deals		1 654 75	
Auto expenses—oil, gas and repairs (business only)		329 42	
Item 13—Interest paid on notes, mortgages, trust deeds also discounts paid on loans			12 416 56
Item 14—Taxes paid on both real and personal property			7 005 14
Item 18—Land Expenses:			
Moneys expended account properties owned			
Labor	$83 63		
Repairs	41 35		

Water rents		121 64		
Escrow and title costs		631 22		
Insurance		221 49		
Assessments		351 46	1 450 79	
Professional expense, legal etc in connection with property			1 291 85	
Commissions paid on sales of property			4 262 50	
Auto Depreciation				310 41
Cost 1929	$2 772 00			
Depreciation 1929	288 75			
	2 483 25			
25%—1930	620 82			
½ pleasure	310 41			
Deductible	310 41			

Item 7—Rents & Royalties

Kind of Property	Amt Rec'd	Cost	Depreciation Repairs	Net Profit
1* Duplex	$275 31	$8 500 00		$275 31
2* Court	1 169 79	28 591 42		1 169 79
3* House	260 25	7 250 00		260 25

4* House	440 60	6 000 00	440 60
5* Market	200 00	19 000 00	200 00
6* Apartment	950 32	49 000 00	950 32

Expenses in connection with above properties deducted under Taxes, Interest Land Expenses

Item 8—Profit from sale of Real Estate, Stocks Bonds etc.

Kind of Property	Date Acquired	Amt Rec'd	Cost	Subsequent Imps	Net Profit
1—Lot 5, Tr. 784	March 1930	$15 000 00	$9000.		$6 000 00
2—Lot 94, Tr 5219	" 1930	1 350 00	1650.	Loss	300 00
Southeast Bldg & Loan	1928–29	6 000 00	5000.		1 000 00
North American Aviation	1929	4 886 06	8062.50	Loss	3 175 44
Money lost on stocks on margin					3 500 00

Net Profit $24.56

U. S. District Court No. 15597 C O Crs Exhibit No. 6 Filed 1-13-33 J L I. Referee

Filed R. S. Zimmerman, Clerk, at 50 min past 4 o'clock, Apr. 18, 1933 PM. By L B Figg, Deputy Clerk.

[OBJECTING CREDITORS' EXHIBIT NO. 7.]

COPY

INDIVIDUAL INCOME TAX RETURN

For Net Incomes From Salaries or Wages of More Than $5,000

And Incomes From Business, Profession, Rents, or Sale of Property

For Calendar Year 1929

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1931

Print Name and Address Plainly Below

Mrs Ralph L. Stephens
(Name)

7208 Seville St.
(Street and Number, or rural route)

Huntington Park	L. A.	Calif.
(Post office)	(County)	(State)

Occupation Housewife
Form 1040

Treasury Department
Internal Revenue Service

DUPLICATE

Detach and Retain
This Copy and
the Instructions

DUPLICATE

If You Need
Assistance, Go to a
Deputy Collector
or to the
Collector's Office

1. Are you a citizen or resident of the United States?
   Yes

2. If you filed a return for 1929, to what Collector's office was it sent? Los Angeles

3. Is this a joint return of husband and wife? No

4. State name of husband or wife if a separate return was made and the Collector's office where it was sent
   Ralph L. Stephens Los Angeles

5. Were you married and living with husband or wife on the last day of your taxable year? Yes

6. If not, were you on the last day of your taxable year supporting in your household one or more persons closely related to you? 1

7. If your status in respect to questions 5 and 6 changed during the year. state date and nature of change........

8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support were receiving their chief support from you on the last day of your taxable year? 2

INCOME

Item and Instruction No.		Amount received	Expenses paid (Explain in Schedule F)	
1.	Salaries, Wages, Commissions, etc. (State name and address of employer)			
	One half of earned net income as shown itemized on return of husband			$ 6 158 66
2.	Income from Business or Profession. (From Schedule A)			
3.	Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)			
4.	Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source			
5.	Income from Partnerships. (State name and address)			
6.	Income from Fiduciaries. (State name and address)			
7.	Rents and Royalties. (From Schedule B)			1 944 38
8.	Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)			21 162 31

Item	Description	Amount	Total
9.	Taxable Interest on Liberty Bonds, etc. (From Schedule E)	....	
10.	Dividends on Stock of Domestic Corporations City Natl Bank & Conservative Mtge	2 416 84	
11.	Other Income (including dividends on stock of foreign corporations). (State nature of income)		
	(a)	....	
	(b)	....	
12.	Total Income in Items 1 to 11		$31 682 19

DEDUCTIONS

Item	Description	Amount	Total
13.	Interest Paid	$ 4 760 03	
14.	Taxes Paid. (Explain in Schedule F)	1 082 68	
15.	Losses by Fire, Storm, etc. (Explain in Table at foot of page 2)	....	
16.	Bad Debts. (Explain in Schedule F)	....	
17.	Contributions. (Explain in Schedule F)	143 25	
18.	Other Deductions Authorized by Law. (Explain in Schedule F)	3 674 34	
19.	Total Deductions in Items 13 to 18		$ 9 660 30
20.	Net Income (Item 12 minus Item 19)		$22 021 89

EARNED INCOME CREDIT

Item		Amount
21.	Earned Income (not over $30,000)	$ 6158 66
22.	Less Personal Exemption and Credit for Dependents	2150 —
23.	Balance (Item 21 minus 22)	$ 4008 66
24.	Amount taxable at 1½% (not over $4,000)	$ 4000 —
25.	Amount taxable at 3% (not over $4,000)	8 66
26.	Amount taxable at 5% (balance over $8,000 of Item 23)	....
27.	Normal Tax (½% of Item 24)	$ 20 ....
28.	Normal Tax (2% of Item 25)	 17
29.	Normal Tax (4% of Item 26)	....
30.	Surtax on Item 21	....
31.	Tax on Earned Net Income (total of Items 27 to 30)	$ 20 17
32.	Credit of 25% of Tax (not over 25% of Items 30, 44, 45, and 46)	$ 5 04

COMPUTATION OF TAX (See Instruction 23)

33.	Net Income (Item 20 above)		$22021 89
	Less:		
34.	Liberty Bond Interest (Item 9)	$........	
35.	Dividends (Item 10)	2416 84	
36.	Credit for Dependents	400 —	
37.	Personal Exemption	1750 —	
38.	Total of Items 34 to 37		4566 84
39.	Balance (Item 33 minus 38)		$17455 05
40.	Amount taxable at 1½% (not over $4,000)		4000 —
41.	Balance (Item 39 minus 40)		$13455 05
42.	Amount taxable at 3% (not over $4,000)		4000 —
43.	Amount taxable at 5% (Item 41 minus 42)		$ 9455 05
44.	Normal Tax (½% of Item 40)		$ 20 —
45.	Normal Tax (2% of Item 42)		80 ....
46.	Normal Tax (4% of Item 43)		378 20
47.	Surtax on Item 20 (see Instruction 23)		321 31

48. Tax on Net Income (total of Items 44 to 47) ....$ 799 51

49. Tax on Capital Gain or Loss ($12\frac{1}{2}\%$ of Col. 8, Sched. D) ....

50. Total of or difference between Items 48 and 49 ....$........ ....

51. Less Credit of 25% of Tax on Earned Income (Item 32) 5 04

52. Total Tax (Item 50 minus 51) ....$ 794 47

53. Less Income Tax Paid at Source ....

54. Income Tax paid to a foreign country or U. S. possession ....

55. Balance of Tax (Item 52 minus Items 53 and 54) ....$ 794 47

TAXPAYER'S RECORD OF PAYMENTS

Payment	Amount	Date	Check or M. O. No.	Bank or Office of Issue
First 3	198 62	....	....	....
Second	198 62	....	....	....
Third	198 62	....	....	....
Fourth	198 61	....	....	....
	794.47			

COPY

Schedules to Be Attached to Return of—Mrs. Ralph L. Stephens—1929

Schedule B

Item 7—Rents & Royalties:

Kind of Property	Amount Rec'd	Cost	Depreciation	Repairs	Net Profit
1 Court**	$3 888 76	$28 591 42	None	None	$1 944 38*

Note* The remaining half of rents received are reported by husband on his separate return as his portion of such revenue.

Expenses in connection with above properties deducted under Taxes, Interest, Land expenses, etc.

Schedule C

Item 8—Profit from Sale of Real Estate, Stocks, Bonds, etc.

Kind of Property	Date Acquired	Am't Rec'd	Cost	Subsequent Imp's	Net Profit
1—Lot 121 Tr 6674 & E. 47′ Lot 11 Bl 9	Aug. 1928	$34 540 63	$28 591 42	--	$ 2 974 60*
2—Stocks:					
a—S. E. B & Loan	1928–29	8 125 00	7 975 00	--	75 00*
b—Axelson Mach Co. (Margin)	1929	4 731 56	4 650 00	--	40 78*
c—Cons M & F Co	1927–28	50 660 00	39 760 00	--	5 450 00*
d—City Nat'l Bank	1927–28	189 113 18	147 610 00	--	20 751 59*
				Total	$29 291 97
Less—					
e—Miscellaneous stocks purchased on margin Amount on deposit, lost—($16 259 32)					8 129 66
				Amount returned	$21 162 31

Above properties acquired by purchase.

The remaining half of the profits on above sales are reported by husband on his separate return as his share of profits on community property acquired since July 1927.

COPY

SCHEDULES TO BE ATTACHED TO RETURN OF—Mrs. Ralph L. Stephens

1929

DEDUCTIONS

SCHEDULE "F"

Item 13—Interest paid on loans on property and securities $9520.06, less half of amount deducted on return of husband		$4 760 03
Item 14—Taxes paid on real and personal property $2 165 36 less half of amount deducted on return of husband		1 082 68
Item 17—Contributions, charity		143 25
Elks Charity	$14 00	
Christian Church	75 00	
Orth*a*paedic Hospital	2 50	
Community Chest	175 00	
Campfire Girls Charity	10 00	
Methodist Church	10 00	
Total	286 50	
Less half claimed on return of husband	143 25	
Deduction claimed	$143 25	

Item 18---Land expense

Labor, escrow and title charges, assessments and miscellaneous expenses such as water, repairs etc. in connection with property and on which profit is returned in this return, amount of $581.28 of which half is claimed as deduction on return of husband, leaving as deduction	290 64
Professional expenses, lawyer fees, etc in connection with property of $767 40 of which half is claimed as deduction on return of husband, leaving as deduction	383 70
Commissions paid on sale of real estate and bank stock profits on which are shown as revenue on this return of $6,000 00 of which half is claimed as deduction on return of husband, leaving deduction of	3 000 00
	$3 674 34

U. S. District Court No. 15597 C Ob Crs 's Exhibit No. 7 Filed 1-13-33 J L I. Referee

Filed R. S. Zimmerman, Clerk, at 50 min past 4 o'clock, Apr. 18, 1933, PM. By............ Deputy Clerk.

[Objecting Creditors' Exhibit No. 8.]

[Western Union Telegraph form.]

chg acct

1930 NOV 10 AM 11 59

FE151 39 DL COLLECT=SACRAMENTO CALIF 10 1132A

R DECHTER= C328 639 S Spring
72¢ ANS DATE LOSANGELES CALIF=

ACCORDING FILED RECORDS NINETEEN THIRTY LICENSE SIX D EIGHT NAUGHT SIX FOUR TRANSFERRED TO B W SMITH THREE FIVE TWO FOUR FIFTY FOURTH STREET MAYWOOD REGISTERED AND LEGAL OWNER STUDEBAKER BROUGHAM STOP CERTIFICATES ISSUED OCTOBER THIRTIETH NINETEEN THIRTY=

DIVISION OF MOTOR VEHICLES

U. S. District Court No. 15597 C Obj Crs 's Exhibit No. 8 Filed 1-13-33 J. L. I. Referee

Filed R. S. Zimmerman, Clerk, at 10 min past 4 o'clock, Apr. 18, 1933, PM. By L B Figg, Deputy Clerk.

[Objecting Creditors' Exhibit No. 9.]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

LYDIA PIGOTT Plaintiff, vs. MINCH PETROLEUM CORPORATION, LTD., a Corporation, CONSERVATIVE PETROLEUM CORPORATION, LTD., a Corporation, BERT E. MINCH, RALPH L. STEPHENS, also known as R. L. STEPHENS, FRAZIER McINTOSH, JOHN DOE, JANE DOE, RICHARD ROE, ONE DOE COMPANY, Defendants.	No................. Action brought in the Superior Court of the County of Los Angeles, and Complaint filed in the Office of the Clerk of the Superior Court of said County.

THE PEOPLE OF THE STATE OF CALIFORNIA SEND GREETINGS TO:

MINCH PETROLEUM CORPORATION, LTD., a Corporation, CONSERVATIVE PETROLEUM CORPORATION, LTD., a Corporation, BERT E. MINCH, RALPH L. STEPHENS, Also known as R. L. STEPHENS, FRAZIER McINTOSH, JOHN DOE, JANE DOE, RICHARD ROE, ONE DOE COMPANY, Defendants.

You are directed to appear in an action brought against you by the above named plaintiff.... in the Superior Court of the State of California, in and for the County of Los Angeles, and to answer the complaint therein within ten

days after the service on you of this Summons, if served within the County of Los Angeles, or within thirty days if served elsewhere, and you are notified that unless you appear and answer as above required, the plaintiff.... will take judgment for any money or damages demanded in the Complaint, as arising upon contract, or will apply to the Court for any other relief demanded in the Complaint.

Given under my hand and seal of the Superior Court of the County of Los Angeles, State of California, this ....day of OCT 31 1930, 193.....

(SEAL SUPERIOR COURT
LOS ANGELES COUNTY)

L. E. LAMPTON,

County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles.

By N. Hollister Deputy.
N. HOLLISTER

NOTICE

APPEARANCE: "A defendant appears in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him." (Sec. 1014, C. C. P.)

Answers or demurrers must be in writing, in form pursuant to rule of court, accompanied with the necessary fee, and filed with the Clerk.

(OVER)

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

Baash-Ross No. 311199

(Space below for filing stamp only)

PIGOTT

Plaintiff

SUMMONS vs.

MINCH PETROLEUM

Defendant

....

Attorney for Plaintiff

STATE OF CALIFORNIA, }
County of Los Angeles } ss.

P. Rudnich being sworn, says: I am and was at the time of the service of the summons herein, over the age of eighteen years, and not a party to the within entitled action; I personally served the within Summons on the hereinafter named defendants, by delivering to and leaving with each of said defendants personally, in the County of Los Angeles, State of California, at the address and the time set opposite their respective names, a copy of said Summons attached to a copy of the Complaint referred to in said Summons.

Name of Defendants Served	City and Street Address	Date of Service

Minch Petroleum Corporation Ltd. by serving Ralph L Stephens President 6208 Seville Huntington Park Oct 3, 1930

Ralph L. Stephens 6218 Seville Huntington Park Oct 3, 1930

Bert E. Minch *Vince* Calif. Oct. 4, 1930

Frazier McIntosh Bartlett Bldg Oct 3, 1930

Conservative Petroleum Corporation Ltd by serving Ralph L. Stephens Prest 6208 Sevi*le* St Huntington Park Oct 3, 1930

My fees for services are, $4.50 for 28 miles actually traveled at 25 cents per mile, $7.00. Notary 50 Total, $12.00.

P. Rudnich.

Subscribed and sworn to before me this 5 day of Nov, 1930.

L. E. LAMPTON,

County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles.

By..Deputy.

Raphael Dechter

Notary Public in and for the County of Los Angeles, State of California.

RAPHAEL DECHTER
ATTORNEY AT LAW
825 Stock Exchange Bldg.
LOS ANGELES, CALIF.
TUcker 1021

U. S. District Court No. 15597 C Obj Crs 's Exhibit No. 9. Filed 1-13-33 J L I. Referee

Filed R. S. Zimmerman, Clerk, at 10 min past 4 o'clock, Apr. 18, 1933, PM. By L B Figg, Deputy Clerk.

[Objecting Creditors' Exhibit No. 10.]

GRANT DEED

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a National Banking Association,

~~PACIFIC SOUTHWEST TRUST & SAVINGS BANK~~, ~~a corporation organized under the laws of the State of California,~~ ~~and~~ having its principal place of business at Los Angeles, California, in consideration of TEN and 00/100 ($10.00).. Dollars, the receipt of which is hereby acknowledged, does hereby

Grant to OSCAR A. STEPHENS, a married man, - - - -

City of South Gate,
all that real property situate in the ^ County of Los Angeles, State of California, described as follows:

- - - Lots Three Hundred Eleven (311) and Three Hundred Twelve (312) - - - - - - of Tract No. 6666, Sheets 1,

2 and 3, (commonly known as "Home Gardens 6th Unit") as per map recorded in Book 72, Pages 45, 46 and 47 respectively, of Maps, in the office of the County Recorder of said County.

Reserving unto the Grantor, its successors and assigns, a right of way five (5) feet wide along, over and under the rear line of all lots in said Tract No. 6666, except the lots fronting on Lincoln Boulevard with the exception of Lots 787, 788 and 789, for the erection, maintenance and operation of pole lines for the transmission of electrical energy, and for telephone and telegraph lines, and to lay and maintain water pipes, together with the right of entry for the purpose of constructing, erecting, operating, repairing and maintaining the same.

Subject to all ------------------ taxes for the fiscal year 1930-1931.

Subject to all municipal taxes, assessments and liens of the City of South Gate.

Subject to street bonds of record.

Subject to encumbrances of record.

This conveyance is made subject to the following express covenants, conditions and restrictions, which shall apply to and bind the Grantee, his heirs, devisees, executors, administrators, lessees, successors and assigns and which are as follows, to-wit:

1. That as to all lots in said Tract No. 6666, except the lots facing on Lincoln Boulevard and on Alexandria Avenue, no buildings or structures other than buildings to be used for residence purposes only, which shall cost and be fairly worth not less than Fifteen Hundred Dollars ($1500.00), shall be erected, placed or maintained thereon,

and any such building so erected shall be placed not nearer than twenty (20) feet to the front line of the lot upon which it is located; excepting, in case the premises are used for the exploration, drilling, developing, collecting, obtaining and removing therefrom crude petroleum, oil, gas and other hydro-carbon substances, such buildings may be erected thereon as are customarily used in connection with such development and operations.

2. Lots facing on Lincoln Boulevard and Alexandria Avenue may be used for business purposes and the above provided set-back line shall not apply thereto.

3. A temporary home may be erected upon any lot in said Tract, but no part thereof shall be nearer than sixty (60) feet to the front line of the lot upon which it is erected, and the same must be painted or stained before being occupied.

4. That no outside toilet shall be erected upon any lot in said Tract and that all toilets must be sanitary, having a standard cesspool installed in connection therewith.

5. No lot in said Tract, nor any part of any lot, shall ever at any time be sold, conveyed, leased or rented to or be used or occupied by any person other than of the White or Caucasian race.

The restrictions contained in paragraphs 1 to 4 above shall terminate and be of no effect whatsoever after January 1st, 1937.

The breach of any of the foregoing conditions and covenants shall cause said premises, together with the appurtenances thereto belonging, to be forfeited to and revert to the Grantor, its successors and assigns, each of whom

shall have the right to immediate entry upon said premises in the event of such breach. But the breach of any of the foregoing conditions or covenants, or any re-entry by reason of such breach, shall not defeat nor affect the lien of any mortgage or deed of trust made in good faith for value, upon said land; provided, however, that the breach of any of said conditions may be enjoined, abated, or remedied by appropriate proceedings, notwithstanding the lien or existence of such trust deed or mortgage; but nevertheless, each and all of the foregoing conditions and covenants shall remain at all times in full force and effect as against and shall be binding upon, and shall be part of the estate acquired by any one, and the successors and assigns of any one acquiring title under or through any such deed of trust or mortgage, and a forfeiture and re-entry may be enforced following any breach by them or any of them.

IT IS UNDERSTOOD AND AGREED that the above and foregoing conditions and restrictions are subject to any and all ordinances of any City in which the property is located, or by any governmental or public agency creating or dealing with zones and prescribing the classes of buildings, structures and improvements in said zones, and the use thereof.

IT IS EXPRESSLY AGREED and understood by and between the parties hereto that in the event any covenant or condition herein contained is invalid or is held to be invalid or void by any Court of competent jurisdiction, such invalidity or voidness shall in no way affect any valid covenant or condition herein contained.

It is an express condition of this conveyance that the Grantor herein shall not be responsible or liable for any

promise, representation, agreement, condition or stipulation not set forth herein.

SECURITY-FIRST NA-
In Witness Whereof, said ~~PACIFIC SOUTHWEST~~
TIONAL BANK OF LOS ANGELES
~~TRUST & SAVINGS BANK~~ has hereunto affixed its ~~corporate~~ name ~~and seal~~ by its Vice President and Assistant Secretary, thereunto duly authorized, this 27th day of August, 1930. ~~192~~ .

SECURITY-FIRST NATIONAL BANK OF
~~PACIFIC SOUTHWEST TRUST & SAVINGS~~
LOS ANGELES
~~BANK~~

LJN By B H Grigsby, Vice President

Attest: W. W. French, Assistant Secretary

STATE OF CALIFORNIA,
County of Los Angeles } ss.

On this 4th day of September, A. D. 1930, before me Carolyn F. Erhardt, a Notary Public in and for said County and State, residing therein, duly commissioned and qualified, personally appeared B. H. Grigsby known to me to be the Vice-President, and W. W. French known to me to be the Assistant Secretary of the Security-First National Bank of Los Angeles, the National Banking Association that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the association therein named, and acknowledged to me that such association executed the same.

Witness my hand and official seal.

[Seal] Carolyn F. Erhardt

Notary Public in and for said County and State.

SS-
TRUST No. 3738

GRANT DEED

SECURITY-FIRST NATIONAL BANK OF
LOS ANGELES
~~Pacific Southwest Trust & Savings Bank~~

TO

OSCAR A. STEPHENS

Date August 27, 1930

SECURITY-FIRST NATIONAL BANK OF
LOS ANGELES
~~PACIFIC SOUTHWEST TRUST & SAVINGS BANK~~

Cor. Sixth and Spring Sts.
LOS ANGELES, CALIFORNIA

LJN:W

Order No. 984

When recorded, please mail this deed to Oscar A.
7208 Seville Ave.,
Stephens ~~222 So. Pacific Blvd.~~ Huntington Park, Calif.

RECORDED SEP 27 1930 20 MIN. PAST 9 A. M. IN BOOK 10346 AT PAGE 86 OF OFFICIAL RECORDS, LOS ANGELES CO., CAL. RECORDED AT REQUEST OF Grantee√ C. S. Logan. County Recorder I certify that I have correctly transcribed this document in above mentioned book. D Griffin #70 Copyist County Recorder's Office, L. A. County, Cal.

COMPARED

Document— SCHULTZ
Book——— SPANGLER

1 80/14

U. S. District Court No. 15599 C Obj Crs 's Exhibit 10 Filed 1-13-33 J L I Referee

Filed R. S. Zimmerman, Clerk, at 52 min past 4 o'clock, Apr. 18, 1933, PM. By L B Figg, Deputy Clerk.

[Objecting Creditors' Exhibit No........]

COPY

INDIVIDUAL INCOME TAX RETURN

For Net Incomes From Salaries or Wages of More Than $5,000

And Incomes From Business, Profession, Rents, or Sale of Property

For Calendar Year 1929

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1931

Print Name and Address Plainly Below

Ralph L. Stephens

(Name)

7208 Seville St.

(Street and number or rural route)

Huntington Park	Los Angeles	Calif.
(Post office)	(County)	(State)

Occupation President, Bank & Finance Co.
Real Estate

Form 1040
Treasury Department
Internal Revenue Service
DUPLICATE
Detach and Retain
This Copy and
the Instructions

DUPLICATE
If You Need
Assistance, Go to a
Deputy Collector
or to the
Collector's Office

1. Are you a citizen or resident of the United States?
   Yes
2. If you filed a return for 1929, to what Collector's office was it sent? Los Angeles
3. Is this a joint return of husband and wife? No
4. State name of husband or wife if a separate return was made and the Collector's office where it was sent
   Mrs Ralph L. Stephens Los Angeles
5. Were you married and living with husband or wife on the last day of your taxable year? Yes
6. If not, were you on the last day of your taxable year supporting in your household one or more persons closely related to you? 1
7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change 1
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support were receiving their chief support from you on the last day of your taxable year? 2

INCOME

Item and Instruction No.		Amount received	Expenses paid (Explain in Schedule F)	
1.	Salaries, Wages, Commissions, etc. (State name and address of employer)			
	Conservative Mtge & Finance Co. 6322 Pacific H P	$10484.40)	$	$
	Rio Hondo C C. Downey, Calif	11297.50)		
	City National Bank 6320 Pacific H P	6840.00)		
	J. L. Stevenson—8421 L B Blvd	325.--)		
	G. J. Davies	1868.25)	8569.23	
	Misc.	70.89)		
2.	~~Income from Business or Profession.~~ ~~(From Schedule A)~~	20886.54	12317.31	6 158 65
	Less half reported on return of wife		6158.65	
3.	Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)			

Item	Description	Amount	Total
4.	Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source	....	
5.	Income from Partnerships. (State name and address	....	
	....	....	
6.	Income from Fiduciaries. (State name and address)	....	
	....	....	
7.	Rents and Royalties. (From Schedule B)	3 087 18	
8.	Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)	22 460 98	
9.	Taxable Interest on Liberty Bonds, etc. (From Schedule E) City Natl Bank of H P Conservative Mtge & Fin Co	2 416 83	
10.	Dividends on Stock of Domestic Corporations	....	
11.	Other Income (including dividends on stock of foreign corporations). (State nature of income)		
	(a)	....	
	(b)	....	
12.	Total Income in Items 1 to 11		$34 123 64

DEDUCTIONS

13.	Interest Paid	$ 7 601 80	
14.	Taxes Paid. (Explain in Schedule F)	2 135 64	
15.	Losses by Fire, Storm, etc. (Explain in Table at foot of page 2)	....	
16.	Bad Debts. (Explain in Schedule F)	475 14	
17.	Contributions. (Explain in Schedule F)	143 25	
18.	Other Deductions Authorized by Law. (Explain in Schedule F)	4 472 55	
19.	Total Deductions in Items 13 to 18		$14 828 38
20.	Net Income (Item 12 minus Item 19)		$19 295 26

EARNED INCOME CREDIT

21.	Earned Income (not over $30,000)	$ 6158 65
22.	Less Personal Exemption and Credit for Dependents	2150 —
23.	Balance (Item 21 minus 22)	$ 4008 65
24.	Amount taxable at 1½% (not over $4,000)	$ 4000 —
25.	Amount taxable at 3% (not over $4,000)	8 65
26.	Amount taxable at 5% (balance over $8,000 of Item 23)	....
27.	Normal Tax (1½% of Item 24)	$ 20 —
28.	Normal Tax (3% of Item 25)	 17
29.	Normal Tax (5% of Item 26)	....
30.	Surtax on Item 21	....
31.	Tax on Earned Net Income (total of Items 27 to 30)	$ 20 17
32.	Credit of 25% of Tax (not over 25% of Items 30, 44, 45, and 46)	$ 5 04

COMPUTATION OF TAX (See Instruction 23)

No.	Item		
33.	Net Income (Item 20 above)		$19295 26
			2416 83
	LESS:		
34.	Liberty Bond Interest (Item 9)	$	
35.	Dividends (Item 10)		
36.	Credit for Dependents	400 —	
37.	Personal Exemption	1750 —	
38.	Total of Items 34 to 37		4566 83
39.	Balance (Item 33 minus 38)		$14728 43
40.	Amount taxable at ~~1~~½% (not over $4,000)		4000 —
41.	Balance (Item 39 minus 40)		$10728 43
42.	Amount taxable at 3% (not over $4,000)		4000 —
43.	Amount taxable at 5% (Item 41 minus 42)		$ 6728 43
44.	Normal Tax (1½% of Item 40)	$	20 —
45.	Normal Tax (~~3~~ 2% of Item 42)		80 —
46.	Normal Tax (~~5~~ 4% of Item 43)		269 14

47. Surtax on Item 20 (see Instruction 23)...... 191 81

48. Tax on Net Income (total of Items 44 to 47) ....$ 560 95

49. Tax on Capital Gain or Loss (12½% of Col. 8, Sched. D).. ....

50. Total of or difference between Items 48 and 49 ....$.......... ....

51. Less Credit of 25% of Tax on Earned Income (Item 32)... 5 04

52. Total Tax (Item 50 minus 51).....................$ 555 91

53. Less Income Tax Paid at Source.................. ....

54. Income Tax paid to a foreign country or U. S. possession.. ....

55. Balance of Tax (Item 52 minus Items 53 and 54)..$.......... ....

TAXPAYER'S RECORD OF PAYMENTS

Payment	Amount	Date	Check or M. O. No.	Bank or Office of Issue
First	........138 98	.. ..	....	....
Second	....138 98	....	....	....
Third..	....138 98	....	....	....
Fourth	....138 97	....	....	....
	555 91			

COPY

SCHEDULES TO BE ATTACHED TO REPORT OF RALPH L. STEPHENS, 1929

Schedule "F"

DEDUCTIONS

Item 1—

a—Salaries, commissions paid to salesmen, clerical help, etc.			$4 061 95
b—Rent, 2 offices			1 075 00
c—Telephone & Telegraph, 2 offices			274 69
d—Advertising " "			901 31
e—Office Expense, 2 offices, including stationery and supplies, postage, janitor service, towel and water service, etc.			307 08
f—Entertainment, club expenses, traveling expenses, accrued in the promotion of business deals of the organizations			1 020 40
g—Auto Expense			928 80
Explanation—Gas, oil, repairs	$274 43	(business only)	
Auto Insurance	142 79		
*Loss Ford Auto	31 50		
*Loss Studebaker	335 70		
*Depreciation	144 38		
	928 80		
		Total	8 569 23

*Depreciation

Cost—	$2 772 00		
25%	693 00	for year car owned 5 months	$288 75
		Less half acct pleasure	144 37
		Deductible depreciation	144 38

*Auto Loss—Studebaker—Purchased August, 1928—sold July 1929

Cost—	2 585 00	
Less—	215 41	—Depreciation claimed 1928
	2 369 59	
Received	1 922 00	
Loss—	447 59	
Less	111 89	25% acct pleasure
Deductible loss	335 70	

*Auto Loss—Ford—used only in business—purchased May 1929.

Cost	702 50	(Owned only 1 month, no depreciation claimed)
Received	671 00	
Loss	31 50	

Item 13—Interest paid on notes, mortgages, Trust Deeds and discounts paid on loans — 12 361 83

Of this amount the sum of $9 520 06 was paid on loans on properties and securities acquired since July, 1927 one half the profits from which properties and securities are returned by Mrs. Ralph L. Stephens on separate return and she has claimed deduction of one half said amount — 4 760 03

Amount claimed on this return — 7 601 80

Item 14—Taxes paid

Taxes paid on both real and personal property	3 218 32
Less portion deducted on return made by wife	1 082 68
Amount claimed on this return	2 135 64

Item 16—Bad Debts

Notes received as commissions on sale of real estate, payment of note subject to continuance of contracts of sale. Contracts defaulted and purchasers gave up property hence voiding of obligation to pay on note — 475 14

COPY

SCHEDULES TO BE ATTACHED TO REPORT OF RALPH L. STEPHE*SN*—1929

DEDUCTIONS—continued Schedule "F"

Item 17—Contributions.

Elks Charity	$14 00
Christian Church	75 00
Orth*a*paedic Hospital	2 50
Community Chest	175 00
Campfire Girls Charity	10 00
Methodist Church	10 00
Total	286 50
Less half claimed on return of wife	143 25
Amount claimed on return	143 25

Item 18—Land Expenses			$1 379 49
(Itemized—labor	232 75		
Assessments (property sold)	595 70		
Miscellaneous— water bills, repairs etc.	316 66		
Escrow and title costs	159 38	(property sold)	
Insurance	75 00	" "	
Professional expense in connection with property			767 40
Commissions paid on sale of real estate			1 000 00
Commissions paid on sale bank stock			5 000 00
			8 146 89

Less the sum of $3 674 34 deducted on return of Mrs. Ralph L. Stephens, as her half of costs expended account properties acquired since July 1927 — 3 674 34

on which half of income is return by each.

Amount deducted — 4 472 55

COPY

SCHEDULES TO BE ATTACHED TO RETURN OF--RALPH L. STEPHENS, 1929

Schedule B---

Item 7--Rents & Royalties:

Kind of Property	Am't. Rec'd.	Cost	Depreciation	Repairs	Net Profit
1--Oil Lease—vacant	$147.80	$35,000.00	None	None	$147.80
2—Acreage lease—agriculture	500.00	35,000.00	"	"	500.00
3--House	495.00	6,000.00	"	"	495.00
4—Court**	3,888.76	28,591.42	"	"	1,944.38**
				Total --	3,087.18

Note** The remaining half of rents received on item #4 are reported by wife on her separate return as her portion of such revenue.

Expenses in connection with above properties deducted under Taxes, Interest, Land expenses, etc.

****

Schedule C---

Item 8--Profit from sale of real estate, stocks, bonds, etc.

Kind of Property	Date Acquired	Am't. Rec'd.	Cost	Subsequent Imp's.	Net Profit
1—Lot 2710 Tr 5953	Feb. 1927	8,000.00	$6,500.00	$201.34	$1,298.66
2---Lot 121 Tr. 6674 & E. 47′ Lot 11 Bl 9	Aug. 1928	34,540.63	28,591.42	(assess)	2,974.61*
3—Stocks					
a—S. E. B. & Loan	1928–29	8,125.00	7,975.00		75.00*
b—Axelson Mach Co. (margin)	1929	4,731.56	4,650.00		40.78*
c—Cons M & F Co.	1927–28	50,660.00	39,760.00		5,450.00*
d—City Nat'l Bank	1927–28	189,113,18	147,610.00		20,751.59*
				Total	$30,590.64

Less---

e—Miscellaneous stocks purchased on margin

Amount on deposit, *los*........($16,259.32) 8,129.66*

Amount returned... ......$22,460.98

Above properties acquired by purchase.

**On properties marked*, the remaining half of profits reported by wife on her separate return as her share of profits on community property.

****

Filed R. S. Zimmerman, Clerk, at 51 min past 4 o'clock, Apr. 18, 1933, PM. By L B Figg, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

——oOo——

IN THE MATTER OF) No. 15995-C
) In Bankruptcy
RALPH L. STEPHENS,)
) REPORT OF
BANKRUPT.) SPECIAL MASTER

——oOo——

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

The undersigned JAMES L. IRWIN, Referee in Bankruptcy, to whom, as Special Master, the Court heretofore referred Specifications of Grounds of Opposition to Bankrupt's Discharge, filed in behalf of Baash-Ross Tool Company, State Oilfields Supply Company, Standard Pipe and Supply Co., A. D. Mitchell, Frances Hargrove and Juanita Cook, reports as follows:

I.

That upon due notice to all parties, a hearing was had upon said specifications on the 13th and 16th days of January, 1933, at which the bankrupt was present in person and by counsel, and the objecting creditors were present by counsel and some of them personally, and that evidence was taken both in behalf of the bankrupt and in behalf of said objecting creditors, relative to the

matters and items contained in said specifications. That the undersigned Referee has fully considered said evidence and the argument of counsel, and finds the facts to be:

(a). That the bankrupt did not conceal his financial condition or fail to keep books of account or records for the purpose of concealing said condition.

(b). That he did not make any false statements for the purpose of obtaining credit from the objecting creditors, or either or any of them.

(c). That he did not transfer, remove or conceal a portion of his property for the purpose of hindering, delaying or defrauding his creditors, or otherwise.

(d). That he did not transfer a life membership in the Potrero Country Club, as alleged in the specifications of objections, for the purpose of hindering, delaying or defrauding his creditors.

(e). That he did not transfer the property described in Paragraph IV of the specifications of objections for the purpose or with the intent of hindering, delaying or defrauding his creditors, nor did he conceal or remove said properties, or either or any of them, with any such intent or purpose.

(f). That the sale of the Studebaker Automobile by the bankrupt was not unlawful and was without any fraudulent intent or purpose.

II.

That the bankrupt has not withheld anything of value from the Trustee in Bankruptcy. That he surrendered all of his property and assets and has complied with all

the requirements of the law, touching his bankruptcy, and is entitled to his discharge herein.

RECOMMENDATIONS.

The Special Master recommends that an order be made and entered, granting the bankrupt a discharge herein.

That a period of two days was consumed in the said hearing, for which the charges of the Special Master, as such, are $100.00, and his expenses for a shorthand reporter $30.00, which fees and expenses have not been paid. If a Transcript is desired it may be obtained from E. B. Bowman, H. W. Hellman Bldg. Los Angeles, Calif.

Transmitted herewith are the following papers:

Specifications of Objections to Discharge;

Order of Reference;

Notice of Hearing;

Oath of Special Master.

Dated: February 8th, 1933.

Respectfully Submitted,

James L Irwin
Special Master

[Endorsed]: No. 15995-C In Bankruptcy In the United States District Court In and for the Southern District of California Central Division In the Matter of Ralph L. Stephens, Bankrupt Report of Special Master Filed R. S. Zimmerman, Clerk at 22 min past 4:00 o'clock Feb 23, 1933 P. M. By L. B. Figg, Deputy Clerk Frank H. Love 805 Stock Exchange Bldg. Los Angeles, Cal. Tr. 0191 Attorney for Bankrupt.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

In the Matter of	)	In Bankruptcy
	)	No. 15995-C
	)	
RALPH L. STEPHENS.	)	EXCEPTIONS TO
	)	REPORT OF
Bankrupt.	)	SPECIAL MASTER
	)	ON DISCHARGE

Come now the Baash-Ross Tool Company. State Oilfields Supply Company. Standard Pipe and Supply Co., A. D. Mitchell. Frances Hargrove and Juanita Cook. objecting creditors herein. and hereby except to the report of the Honorable James L. Irwin. Referee. to whom. as Special Master. has been referred the petition of the bankrupt for discharge. and the specifications of such objecting creditors of the grounds of opposition thereto. and they except to said report on the following grounds:

I.

That Finding Number I of the Special Master's Report is contrary to the evidence. and the evidence is not sufficient to sustain said finding.

In support of said exception your objecting creditors point out that the evidence is without contradiction that no satisfactory explanation is made for the failure to surrender the records of the Bankrupt to the Trustee; that the evidence is uncontradicted that, among other misrepresentations, the Bankrupt in his financial statements to creditors set forth the fact that he had liabilities of approximately $70,000.00, whereas, in truth and in fact, his liabilities were $114,000.00; that the evidence was undisputed that with the exception of the home in which the Bankrupt was living, and which had two encumbrances and a homestead against it, every other piece of property belonging to the Bankrupt was concealed from his creditors, by having same appear of record in the names of other persons, dummies of said Bankrupt.

II.

That the Report of the Special Master recommending a discharge is contrary to the evidence and contrary to law.

WHEREFORE, your objecting creditors pray that their objections be sustained.

R. Dechter

Attorney for objecting creditors

UNITED STATES OF AMERICA)
Southern District of California) ss.
Central Division)

J. FARBSTEIN, being by me first duly sworn, deposes and says: that he is the President of STANDARD PIPE AND SUPPLY CO., a corporation, one of the objecting creditors in the above entitled action; that he has read the foregoing EXCEPTIONS TO REPORT OF SPECIAL MASTER ON DISCHARGE and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

J. Farbstein

Subscribed and sworn to before me this 6th day of March, 1933.

[Seal] Raphael Dechter

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: No. 15995-C In the United States District Court In and for the Southern District of California Central Division In the Matter of Ralph L. Stephens, Bankrupt. Exceptions to Report of Special Master on Discharge. Received copy of the within this 8 day of March, 1933 Frank H. Love Attorney for Bankrupt. Filed R. S. Zimmerman Clerk at 55 min past 4:00 o'clock Mar 8, 1933 P. M. By L. B. Figg, Deputy Clerk Law Offices Raphael Dechter 825 Stock Exchange Building 739 South Spring Street Los Angeles Trinity 8383 Attorney for Objecting Creditors.

At a stated term, to wit: The February Term, A. D. 1933, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 16th day of May in the year of our Lord one thousand nine hundred and thirty-three.

Present:

The Honorable GEORGE COSGRAVE, District Judge.

In the Matter of)
)
Ralph L. Stephens,) No. 15,995-C-Bkcy.
)
Bankrupt.)

This matter having come before the Court on March 27th, 1933, for confirmation of report of Special Master, filed February 23, 1933, recommending bankrupt be granted a discharge, and for allowance of fees therein requested, and (2) for hearing on exceptions filed March 8, 1933, to report of Special Master on discharge; said report and exceptions thereto having been argued and ordered submitted on authorities to be filed, and memoranda having been filed, and having been duly considered by the Court; in consideration whereof, it is now by the Court ordered that said exceptions be overruled and report of the Special Master is confirmed.

DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

In the Matter of	)	
	)	No. 15995-C
RALPH L. STEPHENS	)	IN BANKRUPTCY
	)	(Discharge of
Bankrupt.	)	Bankrupt.)

Whereas RALPH L. STEPHENS of LOS ANGELES COUNTY, in said district, has been duly adjudged a bankrupt, under the acts of Congress relating to bankruptcy, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by this court that said RALPH L. STEPHENS be discharged from all debts and claims which are made provable by said acts against his estate, and which existed on the 23rd day of Jan., A. D. 1931, on which day the petition for adjudication was filed against him; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

Witness the Honorable GEO. COSGRAVE, judge of said district court, and the seal thereof, this 17th day of MAY, A. D. 1933.

[Seal] R. S. ZIMMERMAN
Clerk.
By L. B. Figg
Deputy Clerk.

[Endorsed]: Filed R. S. Zimmerman, Clerk, 10:54 May 17 1933 A. M. By L. B. Figg, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

In the Matter of) In Bankruptcy
) No. 15995-C
RALPH L. STEPHENS,)
) PETITION FOR
Bankrupt.) APPEAL

TO THE HONORABLE JUDGES OF THE ABOVE NAMED COURT:

The undersigned, Baash-Ross Tool Company, State Oilfields Supply Company, Standard Pipe and Supply Co., A. D. Mitchell, Frances Hargrove and Juanita Cook, creditors of the above Bankrupt and Objectors herein, conceiving themselves aggrieved by the final order and decree of this Court, entered on the 17th day of May, 1933, granting a discharge to the bankrupt, hereby appeal from said final judgment and order granting said discharge, and they pray that said appeal be allowed and that citation be issued as provided by law; that a bond be fixed, and that a transcript of record, proceedings, exhibits and documents upon which said judgment and decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit under the Rules of said Court in such cases made and provided.

DATED: at Los Angeles in the Southern District of California, this 31st day of May, 1933.

Raphael Dechter

Attorney for Appellants, Baash-Ross Tool Company, State Oilfields Supply Company, Standard Pipe and Supply Co., A. D. Mitchell, Frances Hargrove and Juanita Cook

UNITED STATES OF AMERICA)
Southern District of California) ss.
Central Division)

H. R. MURRAY, being by me first duly sworn, deposes and says: that he is the Secretary-Treasurer of BAASH-ROSS TOOL COMPANY, a corporation, one of the petitioners in the foregoing entitled matter; that he has read the foregoing PETITION FOR APPEAL and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

H. R. Murray

Subscribed and sworn to before me this 31st day of May, 1933.

[Seal] C. E. Riordan,

Notary Public in and for the County of Los Angeles, State of California

My Commission Expires April 20, 1934

[Endorsed]: No. 15995-C. In the District Court of the United States In and for the Southern District of California, Central Division In the Matter of Ralph L. Stephens, Bankrupt. Petition for Appeal. Received copy of the within this 2 day of June, 1933. Frank H. Love, Attorney for Bankrupt. Filed R. S. Zimmerman, Clerk at 2 min past 6:00 o'clock, Jun 2, 1933 P. M. By L. B. Figg, Deputy Clerk. Law Offices Raphael Dechter 825 Stock Exchange Building 739 South Spring Street, Los Angeles Trinity 8383 Attorneys for Appellants.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

In the Matter of	)	In Bankruptcy
	)	No. 15995-C
RALPH L. STEPHENS,	)	
	)	ASSIGNMENT OF
Bankrupt.	)	ERRORS

Come now the appellants herein, Baash-Ross Tool Company, State Oilfields Supply Company, Standard Pipe and Supply Co., A. D. Mitchell, Frances Hargrove and Juanita Cook, and file the following Assignment of Errors on Appeal from the Order of this Court rendered and entered on May 17th, 1933, discharging this bankrupt from his debts in Bankruptcy:

FIRST ASSIGNMENT OF ERROR.

That the United States District Court for the Southern District of California erred in granting this bankrupt a discharge from his debts.

SECOND ASSIGNMENT OF ERROR.

That the United States District Court for the Southern District of California erred in declining to sustain the Exceptions of the Objectors to the Report of the Special Master appointed by this Court to hear the evidence, and in confirming said Report of said Special Master.

THIRD ASSIGNMENT OR ERROR

That the United States District Court for the Southern District of California erred in discharging the bankrupt without the Judge thereof making definite Findings of Fact and Conclusions of Law or expressly adopting as his Findings of Fact and Conclusions of Law, the Findings of Fact and Conclusions of Law of the Special Master.

FOURTH ASSIGNMENT OF ERROR.

That the judgment of the Court discharging the Bankrupt is contrary to the law and particularly to Subdivisions 3 and 4 of Section 14-B of the Bankruptcy Act of the United States.

FIFTH ASSIGNMENT OF ERROR.

That the judgment of this Court is contrary to the evidence and the overwhelming weight thereof.

WHEREFORE, appellants pray that said judgment and order be reversed, and the Cause remanded to the District Court with directions to deny the bankrupt his discharge.

Raphael Dechter

Attorney for Appellants, Baash-Ross Tool Company, State Oilfields Supply Company, Standard Pipe and Supply Co., A. D. Mitchell, Frances Hargrove and Juanita Cook.

[Endorsed]: In Bankruptcy No. 15995-C In the District Court of the United States In and for the Southern District of California Central Division In the Matter of Ralph L. Stephens, Bankrupt. Assignment of Errors. Received copy of the within this 2 day of June, 1933. Frank H. Love, Attorney for Bankrupt. Filed R. S. Zimmerman Clerk, at 4 min. past 6:00 o'clock, Jun 2, 1933 P. M. By L. B. Figg Deputy Clerk. Law offices Raphael Dechter 825 Stock Exchange Building 739 South Spring Street, Los Angeles, Trinity 8383 Attorneys for Appellants.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

In the Matter of)In Bankruptcy No. 15995-C
RALPH L. STEPHENS,) ORDER ALLOWING
Bankrupt.) APPEAL

Baash-Ross Tool Company, State Oilfields Supply Company, Standard Pipe and Supply Co., A. D. Mitchell, Frances Hargrove and Juanita Cook, as creditors of the above Bankrupt, having filed their petition in this Court for an order allowing an appeal to the United States

Circuit Court of Appeals from the judgment and decree of this Court, entered May 17th, 1933, discharging the Bankrupt herein, and the Court having considered said petition for appeal,

IT IS HEREBY ORDERED that said appeal be, and the same hereby is, allowed, and that a certified copy of the record, testimony adduced before the Special Master bearing on and relevant to the grounds of appeal, exhibits, stipulations, and all other proceedings had before this Court or before the Special Master appointed by it, be forthwith transmitted to the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California; and

IT IS FURTHER ORDERED that the bond for appellants be, and the same hereby is, fixed in the sum of $250.00 to be approved by the court.

DATED: June 2, 1933.

Geo. Cosgrave
UNITED STATES DISTRICT JUDGE.

[Endorsed]: In Bankruptcy No. 15995-C. In the District Court of the United States In and for the Southern District of California Central Division. In the Matter of Ralph L. Stephens Bankrupt. Order allowing appeal. Received copy of the within this 2 day of June 1933 Frank H. Love Attorney for Bankrupt. Filed R. S. Zimmerman, Clerk at 4 min past 6:00 o'clock Jun 2, 1933 P. M. By L. B. Figg, Deputy Clerk Law Offices Raphael Dechter 825 Stock Exchange Building 739 South Spring Street Los Angeles Trinity 8383 Attorneys for Appellants

ROYAL
INDEMNITY COMPANY
Head Office: New York

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

In the Matter of the Estate) of) RALPH L. STEPHENS,) Bankrupt.)	COST BOND ON APPEAL Case No. 15995-C

WHEREAS, the BAASH-ROSS TOOL COMPANY, a corporation, STATE OIL FIELDS SUPPLY COMPANY, a corporation, STANDARD PIPE AND SUPPLY CO., a corporation, A. D. MITCHELL, FRANCES HARGROVE and JUANITA COOK have taken or are about to take an appeal to the UNITED STATES CIRCUIT COURT OF APPEALS for the NINTH *DISTRICT* from an Order of Discharge dated the seventeenth day of May, 1933 in the above entitled cause.

NOW, THEREFORE, in consideration of the premises and of such appeal, the ROYAL INDEMNITY COMPANY, a corporation organized under the laws of the State of New York, and licensed to transact a general surety business in the State of California, as Surety, does hereby undertake and acknowledge itself bound in the sum of TWO HUNDRED FIFTY and no/100 DOLLARS

($250.00), that the above named appellants will prosecute their said appeal to effect and answer all damages and costs which may adjudge against them if they fail to make good their appeal.

IN WITNESS WHEREOF, said ROYAL INDEMNITY COMPANY has caused this obligation to be signed by its attorney-in-fact at Los Angeles, California, and its corporate seal to be hereunto affixed, this 5th day of June, 1933.

ROYAL INDEMNITY COMPANY

[Seal] By E. L. Cole

E. L. Cole

Attorney-in-Fact.

Examined and recommended for approval as Provided in Rule 28.

Raphael Dechter

Attorney.

I hereby approve the foregoing bond this 5th day of June, 1933.

Geo Cosgrave

United States District Judge.

The premium on this bond
is $10.00 per annum.

STATE OF CALIFORNIA,)
)ss.
County of Los Angeles,)

On the 5th day of June in the year One Thousand Nine Hundred and 33 before me, Margaret Murphy, a Notary Public, in and for said County, residing therein, duly commissioned and sworn, personally appeared E. L. COLE known to me to be the person whose name is subscribed to the within and annexed instrument, as the Attorney in fact of the ROYAL INDEMNITY COMPANY, and acknowledged to me that he subscribed the name of the ROYAL INDEMNITY COMPANY thereto as surety and his own name as Attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office, in said County of Los Angeles, the day and year last above written.

(SEAL) MARGARET MURPHY

Notary Public in and for said County.
of Los Angeles, State of California.
My Commission Expires Dec 23 1934.

[Endorsed] Case No. 15,995-C. Royal Indemnity Company. In the District Court of the United States In and for the Southern District of California Central Division In the Matter of the Estate of Ralph L. Stephens, Bankrupt Cost Bond on Appeal Filed R. S. Zimmerman, Clerk at 55 min past 10:00 o'clock Jun 5, 1933 A. M. By L. B. Figg, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

In the Matter of)
) No. 15995-C
RALPH L. STEPHENS,)
) STIPULATION
Bankrupt.)

IT IS HEREBY STIPULATED by and between the attorney for the appellants and the attorney for the respondent that there may be incorporated as part of the record on appeal, Schedule "B" of the Bankruptcy Schedules. It is understood that by this stipulation appellants do not waive any rights to object to the materiality or relativity of said Schedule "B".

IT IS HEREBY FURTHER STIPULATED that Petitioners' Exhibit No. 5, consisting of the report of the Pioneer Title Company, may be eliminated from the record, for the reason that said exhibit has no bearing upon this appeal.

DATED: October 25, 1933.

R. Dechter
Attorney for appellants
Frank H. Love
Attorney for respondent

[Endorsed]: Filed R. S. Zimmerman, Clerk at 33 min past 11 o'clock Oct 26 1933 A. M. By Theodore Hocke Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

In the Matter of	)	In Bankruptcy
	)	No. 15995-C
RALPH L. STEPHENS,	)	PRAECIPE FOR
	)	TRANSCRIPT OF
Bankrupt.	)	RECORD

TO THE CLERK OF THE UNITED STATES DISTRICT COURT, FOR THE SOUTHERN DISTRICT, CENTRAL DIVISION:

You are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal allowed in the above entitled proceeding, and to include in such transcript the following:

1. Specifications of Objections to Discharge of Bankrupt filed by Baash-Ross Tool Company, State Oilfields Supply Company, Standard Pipe and Supply Co., A. D. Mitchell, Frances Hargrove and Juanita Cook;

2. Order appointing James L. Irwin, Esquire, Special Master, and referring issues to him;

3. Condensed transcript of testimony taken before James L. Irwin, Esquire, as Special Master, as heretofore served and filed herein;

4. Objector's Exhibits 1, 2, 3, 4, 6, 7, 8, 9 and 10 and the exhibit with no number, being income tax return of Ralph L. Stephens, for the year 1929;

5. Findings of Fact and Conclusions of Law of Special Master;

6. Exceptions filed by Objectors to Report of Special Master;

7. Order overruling Exceptions to Report of Special Master;

8. Discharge of Bankrupt;

9. Petition for Appeal;

10. Assignment of errors;

11. Order allowing Appeal;

12. Appellants' Bond on Appeal;

13. Citation on Appeal;

R. Dechter

R. DECHTER

Attorney for appellants

IT IS HEREBY STIPULATED by and between the attorney for the appellants and the attorney for the Bankrupt that the Clerk may prepare the transcript as in the above praecipe set forth.

DATED: June 10, 1933.

R. Dechter
Attorney for appellants

....
Attorney for bankrupt

[Endorsed] In Bankruptcy No. 15995-C. In the District Court of the United States In and for the Southern District of California Central Division In the Matter of Ralph L. Stephens, Bankrupt Praecipe for Transcript of Record Received copy of the within Praecipe for Transcript of Record this 12th day of June, 1933 Frank H. Love Attorney for Bkrupt Filed Oct. 26 1933 at 32 min past 11 o'clock A M R. S. Zimmerman, Clerk Theodore Hocke Deputy. Law Offices Raphael Dechter 825 Stock Exchange Building 739 South Spring Street Los Angeles Trinity 8383 Attorneys for Appellants.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

In the Matter of	)	In Bankruptcy
RALPH L. STEPHENS,	)	No. 15995-C
Bankrupt.	)	

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 158 pages, numbered from 1 to 158 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; schedule "B" of the bankruptcy schedules; specifications of grounds of opposition to bankrupt's discharge; order appointing James L. Irwin Special Master and referring issues to him; statement of facts; objecting creditors' Exhibits Numbers 1, 2, 3, 4, 6, 7, 8, 9 and 10 together with exhibit bearing no number, being income tax return of Ralph L. Stephens for the year of 1929; report of Special Master; exceptions to report of Special Master on discharge; order overruling exceptions to report

of Special Master; discharge of bankrupt; petition for appeal; assignment of errors; order allowing appeal; cost bond on appeal; stipulation regarding additional paper to be printed in transcript, and praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is $ and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to .... and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this................ day of November, in the year of Our Lord One Thousand Nine Hundred and Thirty-three, and of our Independence the One Hundred and Fifty-eighth.

R. S. ZIMMERMAN,
Clerk of the District Court of the United States of America, in and for the Southern District of California.

By

Deputy.

7325

In the

United States

Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

In the Matter of

RALPH L. STEPHENS,

Bankrupt.

Baash-Ross Tool Company, State Oil-fields Supply Company, Standard Pipe and Supply Company, A. D. Mitchell, Frances Hargrove, and Juanita Cook,

Appellants,

vs.

Ralph L. Stephens,

Appellee.

APPELLANTS' BRIEF ON APPEAL.

RAPHAEL DECHTER,
Stock Exchange Bldg., 639 S. Spring St., L. A.,
Attorney for Appellants.

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PAUL P. O'B

Parker, Stone & Baird Co., Law Printers, Los Angeles.

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In the

United States

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In the Matter of

RALPH L. STEPHENS,

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Baash-Ross Tool Company, State Oilfields Supply Company, Standard Pipe and Supply Company, A. D. Mitchell, Frances Hargrove, and Juanita Cook,

Appellants,

vs.

Ralph L. Stephens,

Appellee.

APPELLANTS' BRIEF ON APPEAL.

FOREWORD.

This matter comes before the court on an assignment of errors on an appeal from an order discharging the bankrupt from his debts in bankruptcy.

The bankrupt applied for his discharge, and certain creditors, to-wit, Baash-Ross Tool Company, State Oilfields Supply Company, Standard Pipe and Supply Company, A. D. Mitchell, Frances Hargrove, and Juanita

Cook, filed specifications of grounds of opposition to such discharge. These specifications were five in number and in substance were that:

(1) The bankrupt had, with intent to conceal his financial condition, failed to keep books of account from which his financial condition might be ascertained.

(2) The bankrupt for the purpose of obtaining property or credit from two of the objecting creditors, made a materially false statement in writing concerning his financial condition, showing a net worth of $250,000.00, whereas the bankrupt was insolvent.

(3) The bankrupt with intent to delay, hinder, and defraud his creditors, had removed and concealed and transferred a portion of his property while insolvent, consisting of a membership in the Portero Country Club, and had transferred an automobile under similar circumstances.

(4) The bankrupt, while insolvent, and without consideration, and with intent to defraud creditors, had transferred several parcels of real property.

(5) That within twelve months preceding the filing of the bankruptcy petition, the bankrupt had caused property described in the fourth objection to be conveyed to other persons for the purpose of concealing the same from the process of his creditors.

The matter was heard before the Referee and he made his findings and recommendations thereon, recommending that the bankrupt be discharged. In the report of the Special Master he found the facts as alleged in all of the objections to be untrue. Exceptions to the report of the Special Master were filed and they were by the court

overruled and the report of the Special Master confirmed, the appeal now before this court being on an assignment of errors from the order confirming the report of the Special Master. The controversy resolves mainly around the second, fourth and fifth specifications. Little or no reliance is placed upon the first and third specifications, which charged a failure to keep books and transfer of a club membership and automobile with intent to hinder, delay and defraud creditors respectively. The second specification on the giving of false financial statements, is one mainly relied upon by the appellant.

STATEMENT OF FACTS.

The statements in writing consisted of financial statements given to Baash-Ross Tool Company and State Oilfields Supply Company, respectively, on or about March 3, and October 4 and 10, 1930, and which said financial statements are marked Objector's Exhibits 1, 2 and 3, respectively. [Tr. pp. 78-88, inclusive.]

It is undisputed that these various statements were given by the bankrupt for the purpose of obtaining credit and obtaining extensions of credit from the respective creditors, and that they relied thereon. [Tr. p. 27.]

About three months subsequent to the giving of these statements, and at the time of the examination of the bankrupt under section 21A of the Bankruptcy Act, the bankrupt submitted to the attorney for the trustee an additional statement in writing, showing the condition of his affairs at the time of the filing of the petition in bankruptcy, this being marked Objectors' Exhibit 4. [Tr. pp. 89-91, inclusive.]

There is a very wide discrepancy between the financial statements submitted to the creditors and the statement given by the bankrupt at the time of the bankruptcy hearing, which said discrepancies give rise to the most serious objections urged. It also appears from the testimony of the bankrupt upon the hearing to the objections that there are certain omissions from the financial statements which will be more specifically hereinafter set forth.

On Objectors' Exhibit 1, the bankrupt sets forth a net worth to him of the sum of $235,608.91. On Objectors' Exhibits 2 and 3, given several months later, he shows a net worth of $258,845.99.

In item 8 of Objectors' Exhibit 1, the bankrupt sets forth as an asset the sum of $246,203.40, consisting of real estate, stocks, bonds, etc., and under item 16 of the same exhibit, shows his incumbrances on the land included in item 8 as being $56,073.00. In Objectors' Exhibits 2 and 3, he sets forth his assets, consisting of real estate, stocks and bonds, etc., at the sum of $266,859.39, and shows as incumbrances on the land included in the last above sum, the sum of $70,897.00.

In the Objecting Creditors' Exhibit 4, there is shown as incumbrances upon his land the sum of $114,568.37, or a difference in incumbrances on the land set forth in Exhibits 1, 2 and 3, and that set forth in Exhibit 4, of the sum of $43,671.37. The bankrupt testified, and such testimony is undisputed, that at the time he started dealing with the Baash-Ross Tool Company, and when he went into the oil business in Venice, California, that all of the incumbrances had been placed on the various different real properties. [Tr. p. 62.] In other words, between the time of the giving of the respective financial statements

and the giving of Objectors' Exhibit 4, no additional incumbrances were placed upon his real property. The bankrupt also testified that the item of $70,897.00 set forth as incumbrances upon his land in Exhibits 2 and 3, represented incumbrances on the real estate shown on the statement to the Baash-Ross Tool Company, and that the item "incumbrances on land" represented incumbrances on the real property shown in Objecting Creditors' Exhibit 4. [Tr. p. 30.]

It also further appears from the undisputed testimony of the bankrupt that at the time of the giving of the various financial statements a suit was pending against the bankrupt for a sum approximating $17,000.00, which suit was subsequently reduced to judgment against the bankrupt. No mention is made of this litigation in any of the financial statements. [Tr. p. 28 and p. 33.]

It also appears that in the financial statement to the Baash-Ross Tool Company (Objectors' Exhibit 2) there was set forth as an asset an item consisting of furniture and equipment of the sum of $5269.15. This item was also set forth in Objectors' Exhibit 3, being the financial statement given October 10th, for the purpose of obtaining an extension of time of payment of the claims of the State Oilfields Supply Company, in which the value of such furniture and equipment was placed at $2257.70. When interrogated about this particular item the bankrupt testified that he did not know what the item of $5000.00 for furniture, fixtures and equipment shown on Exhibit 2 meant, unless it was personal furniture. He also testified that he did not have that much furniture; that he did have furniture consisting of office furniture

worth about $550.00, household furniture worth about $1500.00, and a piano worth about $1700.00, making a total value, including the piano, of $3750.00. [Tr. p. 43.] It is also shown from the testimony of Frank Kennedy, who was employed by the Trustee in Bankruptcy, that he was never able to secure or find any of the items of furniture and equipment as set forth in Exhibit 4. [Tr. p. 36.] The same witness also testified that upon making demand upon the bankrupt for the furniture and fixtures, he said that he had no furniture. [Tr. p. 66.] No further explanation was given by the bankrupt of this item. It is also to be observed that in Schedule B2 [Tr. p. 5] in the bankrupt's schedules, he lists "Household goods and furniture, household stores," etc., at $1000.00.

There also appears in Objectors' Exhibit 2, as an asset, an item of "Memberships," of $2335.00. This item of memberships is set forth in Objectors' Exhibit 4 as $2185.00. The bankrupt testified that at the time the statement was made to the Baash-Ross Tool Company, such memberships were pledged to the Bank of Inglewood. [Tr. p. 46.] In the testimony of Kennedy it was found that the estate was unable to dispose of such memberships, and that they were valueless.

It appears from Objectors' Exhibit 4 that the total values placed on the real property of the bankrupt is the sum of $250,400.00, subject to incumbrances of $114,-568.37; and while in Exhibits 1, 2 and 3, the bankrupt lumped the real property with stocks, bonds, and other assets, we believe that the values placed upon the various parcels of property in Exhibit 4 are indicative of the

values that he placed on the real property in Exhibits 1, 2 and 3. It is also to be noted that in Schedule B1 [Tr. p. 34] he applied the same values to his real estate as he did in Exhibit 4, with the exception of some parcels which he appears not to have owned at the time of the bankruptcy. A check of the values placed on the various parcels of property by the bankrupt is illustrative of the grossly exaggerated values that were placed on the real estate in Objectors' Exhibit 4. Thus we have Lot 1, Tract 1290, consisting of 15 acres, upon which a value of $85,000.00 was placed, subject to incumbrances of $41,-940.00. It appears that the bankrupt purchased this property either in 1925 or 1926, for the purchase price of $40,000.00. [Tr. p. 60.] It further appears from the testimony of D. H. Culver, a qualified real estate man, that the reasonable value of the property, in his opinion, in September and October of 1930, was the sum of $30,000.00.

With respect to Lots 187 and 188, on Long Beach boulevard, a valuation was placed by the bankrupt again at $85,000.00, subject to an incumbrance of $29,000.00. It appears that the bankrupt purchased this property in 1929 or 1930, for the sum of $46,000.00. [Tr. p. 61.] The witness Culver testified that in his opinion these lots were, in September and October of 1930, worth the sum of $20,000.00. [Tr. p. 59.]

The bankrupt attempts to justify these obviously grossly exaggerated values upon the proposition that in his honest opinion the property was worth the valuations as placed on them, but this is the only explanation made for the phenomenal difference between the purchase price and the values placed by the bankrupt.

It appears further from the testimony of the bankrupt [Tr. p. 40] that the 400 shares of Emsco Derrick and Equipment Company stock, which was shown on Objectors' Exhibit 2, was the same as set forth in Objectors' Exhibit 4 at the sum of $4800.00. It further appears from the testimony of the bankrupt that there was nothing in the financial statement (Exhibit 2) to show that the stock had been pledged, which in fact it had. [Tr. p. 41 and p. 53.]

In Objectors' Exhibit 2, under General Information, "amount of notes or accounts payable secured" was given as the sum of $25,258.64, which sum was secured by stocks and mortgages pledged either with City National Bank, Bank of Inglewood, Bank of Lynnwood, and Conservative Mortgage Company. It further appears from his testimony that the bankrupt had prior to the giving of the financial statements pledged with the Union Indemnity Company, the stock of the Emsco Derrick and Supply Company and the stock in the City National Bank, which said stock was shown and reflected on Objectors' Exhibits 2 and 4, respectively. [Tr. p. 41.] No statement was made of the fact that 40 shares of the City National Bank stock had been pledged or placed with the Union Indemnity Company, in Objectors' Exhibit 2. [Tr. p. 41.]

It also appears that the bankrupt did not, in any of the financial statements, list his personal obligations. [Tr. p. 28.] It also appears that the bankrupt kept all the property which he owned with the exception of his home which was heavily encumbered and homesteaded under the laws of the state of California, in the names of persons other than himself, this fact being admitted.

POINTS AND AUTHORITIES.

Trustee contends that under the above circumstances which *are* practically *undisputed,* the financial statements rendered by the bankrupt were materially false or made recklessly and without honest belief that the statements were true, and for the sole purpose of deceiving the persons to whom the statements were rendered, for the purpose of securing credit thereon; and that such statements were false to such an extent that the bankrupt should be denied his discharge.

Here we have no less than five particulars mentioned in the various financial statements which are undisputably false. While it might be urged that any one of the above particulars or falsifications in itself, and standing alone, would be insufficient to deny a discharge, yet when considering the whole chain of false assertions that appear, we believe that it is undisputably apparent that the bankrupt gave these false financial statements with conscientious intention to deceive his creditors, and framed the statements with that objective in view, and purposely concealed his true financial condition, and that evidence wholly fails to support the finding of the Master "that the bankrupt did not make any false statements for the purpose of obtaining credit from the objecting creditors or either or any of them," but on the contrary, such evidence will only support a finding that the bankrupt did make such a statement for the purpose set forth.

Section 14, Subdivision 3, of the Bankruptcy Act, as it stood prior to 1926, reads as follows in part:

> "Or obtain money or property on credit upon a materially false statement in writing, made by him

> for the purpose of obtaining credit from such person."

This section was amended in 1926, and now reads as follows:

> "Obtain money or property on credit or obtain an extension or renewal of credit by making or publishing, or causing to be made or published in any manner whatsoever, a materially false statement respecting his financial condition."

In discussing the purpose and objects to be accomplished by the above section, the Supreme Court of the 8th Circuit, in *Swift v. Fortune,* cited at 287 Fed. 491, states:

> "The discharge of bankrupts from the burden of a debt is a privilege which the law grants under certain circumstances. The theory is to enable the unfortunate honest debtor to be released from the oppressive burden of debt, to start anew with a clean slate and re-establish himself in business, thus not only helping him, but bringing about a resultant benefit to society. Its purpose is not to relieve the debtor from fraudulent conduct nor to put a premium on dishonest business methods. The law should not reward by a discharge such conduct of a bankrupt as is presented in this record. The findings of the Special Master and the Referee are not in accord with the evidence and are manifestly erroneous. The objection of the appellants to the discharge of the bankrupt upon the ground we have herein discussed should have been sustained."

It is to be noted in the above case that the Supreme Court reversed an order of the lower court confirming

a recommendation of a Referee granting a discharge, and the case is in a great many respects similar to the case at bar.

See also

Trumble v. Clareton, 55 Fed. (2nd) 165.

The general rule was laid down by the leading case of *Gilpin v. Merchants National Bank,* 165 Fed. 607. It was there found that the bankrupt did not know what the statement contained or did not know that it was materially false, and that he did not have a conscientious intention of deceiving the creditor. It was shown in this case that the financial statement was signed in blank by the bankrupt and was prepared by his bookkeeper and forwarded to the creditor without his inspection. The court held in construing section 14B, that the word "false" as therein used means more than merely "not true," but imports an intention to deceive, and that a financial statement, in order to bar a discharge in bankruptcy, must be knowingly and intentionally untrue.

The *September, 1932, Supplement to Remington on Bankruptcy, Volume 7, Section 3332½ (New),* states:

> "By the amendment of 1926 the bankrupt is barred of his discharge if the materially false statement in writing respecting his financial condition was caused to be made or published by him 'in any manner whatsoever'; thus the fine distinctions theretofore prevalent under the law with regard to false financial statements as bars to discharge have been largely swept away; in short, if the bankrupt makes or 'causes' to be published in any manner whatsoever a false financial statement, he will be barred of his discharge."

Thus, statements given to mercantile agencies are sufficient. (*In re Licht,* 45 Fed. (2nd) 844.) Under the Amendment of 1926, the obtaining of an extension or renewal of credit, as well as the furnishing of credit, is sufficient. (*Royal Indemnity Co. v. Cooper,* 26 Fed. (2nd) 585.)

In *Volume 7 of Remington on Bankruptcy, Supplement to September, 1933, Section 3336,* it is stated:

> "By the amendment of 1926, eliminating the former words 'for the purpose of obtaining credit," it would seem that the specific intent to obtain credit formerly required need no longer be proved, and that it is now sufficient to prove merely that the bankrupt caused the financial statement to be made or published in such a way that it must be presumed he intended it to affect business actions; * * * the specific intent to obtain credit is no longer required; but if the bankrupt makes a false financial statement in such a way and to such person and under such circumstances as a reasonably prudent man would be presumed to know would likely induce the giving of credit or affect his standing, it would be sufficient."

In *Firestone v. Harvey,* 174 Fed. 574, it was stated:

> "The false statement in writing which is enough to deny a discharge implies a statement knowingly, or made recklessly without honest belief in its truth and with a purpose to mislead or deceive, and thereby obtain from the person to whom it was made property or credit."

In *Mori Mura v. Tabeck,* 279 U. S. 24 (73 L. Ed. 586), the Supreme Court, in denying a discharge in bankruptcy, used the following language:

> "It is established by the clear weight of the evidence that the written statement which was made to the Mori Mura Co. by Nathan Tabeck in behalf of the firm, and was acquiesced in by Julius Tabeck, was not only incorrect, but materially false within the meaning of section 12 of the bankruptcy act; that is, that it was made and acquiesced in either with actual knowledge that it was incorrect, or with reckless indifference to the actual facts without examining the available source of knowledge which lay at hand, and with no reasonable ground to believe that it was in fact correct."

In re Ellertree, 198 Fed. 952: The bankrupt, in order to purchase goods, made a statement to the sellers in writing. Among other things he listed real property at $14,000.00. In the bankruptcy schedules he listed the real property at $6450.00. It sold in the bankruptcy proceedings for $3000.00. No explanation was offered by the bankrupt as to this wide discrepancy. He was denied a discharge, the court saying:

> "The strongest case that I could find in favor of the bankrupt was Gilpin v. Merchants National Bank. (*supra.*)"

and also cites the quotation from the *Firestone v. Harvey* case, *supra,* and adopted the Master's findings, as follows:

> "That the bankrupt's estimate was inaccurate as to the value of the real estate there can be no doubt, and while the opinion is not entertained that a

> bankrupt should be so strictly bound by estimates as by statements of fact, yet it is believed that such estimates should not be so *grossly exaggerated* as to be suggestive of fraud."

The court further says:

> "It can hardly be said that the very remarkable overestimate in the value of the real estate could have been a mere mistake of the bankrupt. It must have been *overestimated for a purpose,* and that purpose, it must be concluded, was to obtain credit, etc."

Cases adhering to the same rule are:

In re Smith, 232 Fed. 249;

In re Fackler, 246 Fed. 865.

Another illustrative authority is *In re Simon,* 201 Fed. 1004, wherein the bankrupt grossly overestimated the value of his stock, and included large values on leaseholds on stores, which were valueless, the court saying in effect, in denying a discharge that the valuations placed upon the leaseholds were speculative and conjectural, and could have no other tendency than to mislead and deceive creditors.

Appellants earnestly insist that the conclusion is inescapable that the statements as given were given recklessly, by one who could not have helped but know that the valuations therein placed upon his various properties were inflated to such an extent that a creditor would be misled and lulled unto extending a line of credit based upon such statements. In other words, the bankrupt gave the statements, so as to speak, with his tongue in his cheek.

Other cases bearing upon the various particular items set forth in the financial statement are as follows:

In re Day, 268 Fed. 1871.

In re Blank, 236 Fed. 801, in which case a discharge was denied where statements of the bankrupt's financial condition omitted an indebtedness for money borrowed from a building and loan association even though it was contended that such omission was immaterial because the money so borrowed was secured by a mortgage or pledge of stock in such building and loan association, and even though the mortgage was recorded under the recording statutes. This affords no excuse. This decision also distinguishes the *Gilpin* case, *supra,* upon the principal of "Scienter," stating that the bankrupt had no actual knowledge that his statement was false.

In *In re Josephson,* 229 Fed. 272, it was held that the intent to deceive may be deduced from all of the facts and circumstances, such as the failure to keep books.

In *In re Wollff,* 11 Fed. (2nd) 293, it was held that discrepancies appearing in a financial statement were of sufficient importance and so grave as to justify a conclusion that they were not made ignorantly and in good faith.

Here we again wish to stress the fact that there was a difference of some $43,671.37 in the amount of the incumbrances shown by the bankrupt upon his financial statements and as actually existed.

In *In re Maagett,* 245 Fed. 804, it was held that knowingly omitting from the statement actual obligations, even

though with the thought that no harm would result, was such conduct as not to be commercially tolerable.

In *In re Terens,* 172 Fed. 938, carelessness in signing a financial statement without due consideration of the facts was regarded as not excusing the bankrupt.

In *Josephs v. Powell and Campbell,* 213 Fed. 627, it was held that where a bankrupt omitted a part of his indebtedness, even though he afterwards secured a release from the creditor of such omitted debts in the bankruptcy proceedings, that the bar to the discharge was complete.

In *In re Russell,* 52 Fed. (2nd) 749, it was held, where a bankrupt listed stock as an asset in his financial statement, and did not list the liabilities under which the securities were hypothecated, he obtained an extension of credit by false statements and should be denied his discharge.

In *In re Woolen Corp. v. Getting,* 33 Fed. (2nd) 259, statements were made in ignorance of the facts, without examination of the books, and the court held under such circumstances that these statements were made with such reckless indifference to the truth as to bar a discharge, although there was no wilful misstatement.

In *In re Keller,* 2nd Fed. Supp. 520, it was held that the school owner's failure to inform a corporation lending him money in reliance upon representations as to the school's surplus, that interest on bonds secured by a mortgage on the school's property, and taxes thereon, were unpaid, was sufficient to bar a discharge.

In *In re Schafer,* 169 Fed. 724, the bankrupt obtained goods on credit by reason of a false financial statement, which gave his liabilities as $2536.00, whereas they were in excess of $11,000.00. Extenuating circumstances were shown by the bankrupt. However, the discharge was refused, the court saying:

> "If it were a matter of discretion with me I frankly confess that extenuating circumstances in the case would lead me to grant this discharge, but upon a careful investigation of the law governing the matter, I am constrained to reach the conclusion that I am not permitted under the circumstances so to do. . . . Under the construction given it (Sec. 14B) the objecting creditor has to establish two things, (1) that the bankrupt obtained property or credit, and (2) that he made to the person from whom he obtained it, a materially false statement in writing for the purpose of so obtaining it. The good but mistaken faith with which such statement is made cannot be taken into consideration. The statement must be materially false. In fact it is not necessary that it be substantially false. . . . That the statement made by the bankrupt in this case was materially false, although it may have been unintentionally so, it seems to me is clearly shown, . . . etc."

The appellants submit that the above authorities cover the several respective instances in which the financial statements appear to be materially false. Considering these various items, then, with the fact that the bankrupt admittedly carried his real property in the names of dummies or persons other than himself, it leads to the conclusion that the bankrupt has transgressed the very purposes and abuses which section 14B seeks to cure. In

other words, such section was designed to prevent the very acts which the bankrupt here has committed, and as is said in *7 Remington on Bankruptcy,* at page 355,

> "However, grounds for refusal of a bankrupt's discharge are not limited to those acts which tend to deplete the estate and to make discovery of its true condition difficult, but are broad enough to include acts which demonstrate the bankrupt's unworthiness to be a member of the business community, entitled to credit."

The Special Master observed that in the case at bar

> "This young man has been guilty of some high financing; I don't think his conduct along that line has been what it might have been." [Tr. p. 68.]

We submit that the bankrupt was guilty of more than high financing, but was guilty of downright fraud and misrepresentation. Certainly a discrepancy of forty-three thousand odd dollars in incumbrances on property without any explanation by the bankrupt, smacks of fraud and not high financing. As was said *In re Ellertree,* 198 Fed. 952:

> "If the indebtedness of the bankrupt had increased from $10,550.00 to $16,046.31 between August and December, as indicated by the Master's report, there should be some explanation as to how the indebtedness was increased to this large amount without a corresponding increase in assets. But even passing this by, it could hardly be said that the very remarkable overestimate in the value of the real estate could have been a mere mistake of the bankrupt; it must have been overestimated for a purpose, and that purpose, it must be concluded, was to obtain credit."

There is absolutely no attempted explanation by the bankrupt of this differential in incumbrances on real estate. He does attempt to justify the differential in valuations of real property by the shrinkage in real property valuations. However, we wish to point out that with respect to Lots 187 and 188, on which he placed a valuation of $85,000.00 in October of 1930, and which land was purchased by him possibly during the same year, that would in no event account for a shrinkage of more than half of the value of the property, taking into consideration as we might the abnormal shrinkage of real property due to economic conditions.

The appellants are of the firm opinion, therefore, that the bankrupt deliberately set out to deceive and mislead his creditors, in order to gain an advantage over them. Such conclusion seems unescapable when viewed in the light of the entire surrounding conduct of the bankrupt, which in the apppellants' opinion, was such as to require a demand of his discharge in bankruptcy.

We respectfully submit that the order herein complained of should be reversed and the cause remanded to the District Court with directions to deny the bankrupt his discharge.

Respectfully submitted,

RAPHAEL DECHTER,

Attorney for Appellants.

In the

United States Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

12

In the Matter of

RALPH L. STEPHENS,

Bankrupt.

Baash-Ross Tool Company, State Oilfields Supply Company, Standard Pipe and Supply Company, A. D. Mitchell, Frances Hargrove, and Juanita Cook,

Appellants,

vs.

Ralph L. Stephens,

Appellee.

BRIEF OF APPELLEE.

FRANK H. LOVE,
Stock Exchange Bldg., 639 S. Spring St., L. A.,
Solicitor for Appellee.

ABRAHAMS & LOVE,
Of Counsel.

Filed

FEB 8 - 1934

PAUL P. O'BRIEN,
CLERK

Parker, Stone & Baird Co., Law Printers, Los Angeles.

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In the

United States

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In the Matter of

RALPH L. STEPHENS,

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Appellants,

vs.

Ralph L. Stephens,

Appellee.

BRIEF OF APPELLEE.

Appellants have neglected to set out in their statement of facts an accurate record of the factual events before the Special Master, and we feel constrained to restate a portion thereof.

STATEMENT.

Ralph L. Stephens, the bankrupt, had a one-third interest in the Conservative Petroleum Corporation, a corporation, and was called upon by two of the objecting

creditors, Baash-Ross Tool Company and State Oilfields Supply Company, to guarantee the indebtedness of that corporation to them. In connection therewith two financial statements were given to Baash-Ross Tool Company, Objecting Creditors' Exhibits 1 and 2. Objecting Creditors' Exhibit 2 was made out because more detailed information was required. [Tr. p. 45.] Objecting Creditors' Exhibit 3 was given by the bankrupt to the attorney for State Oilfields Supply Company, wherein the bankrupt represented his financial worth to be $250,000.00. None of the other objecting creditors contend any false statements were made to them to secure money or credit.

At the time the aforesaid statements were given (they having been prepared from the bankrupt's records by Miss Smith) [Tr. p. 53], the indebtedness complained about had been created by Conservative Petroleum Company to said objecting creditors. No materials or credit were furnished thereafter to it by State Oilfields Supply Company, and Baash-Ross Tool Company, the other of said objectors, did not rely upon the financial statements, Exhibits 1 and 2. Mr. Neeley, credit manager of the Baash-Ross Tool Company, in company with the bankrupt, examined the property set out therein. [Tr. pp. 45 and 46; Opinion of Special Master, Tr. p. 69.]

Exhibit 4 is no part of the financial statements, is undated and unsigned, contains property deeded out before the financial statements 1, 2 and 3 were given [Tr. p. 31], was not prepared by the bankrupt [Tr. p. 29],

and was purported to have been given to the witness Raphael Dechter, the date not being disclosed by the record. [Tr. p. 30.]

No mention was made in the financial statements of a pending action against the bankrupt that subsequently resulted in a judgment against him approximating $17,-000.00. [Tr. p. 33.] At time the financial statements were made out, a companion suit was pending on appeal to the California District Court of Appeal between the same parties, arising out of a Superior Court judgment in favor of the bankrupt, who was plaintiff, and against the defendant therein, for $256,162.20, with interest from July 11th, 1929. [Tr. p. 14.] As the bankrupt testified:

> "He owed me; I didn't claim I owed him." [Tr. p. 33.]

The record does not disclose what property of the bankrupt, either real or personal, sequestered by the receiver was turned over to the trustee.

After a careful examination of all of the evidence, the Special Master, before whom the issues were tried, made a direct finding against each and every specification asserted by the objecting creditors and recommended to the United States District Court that the bankrupt be given his discharge. [Tr. pp. 108-139.] Thereafter the same objectors filed with the United States District Court exceptions to the report of the Special Master [Tr. pp. 141-142], and upon a hearing thereon, said court overruled the exceptions, ordered the report of the Special Master confirmed [Tr. p. 144], and ordered the bankrupt discharged from his obligations. [Tr. p. 145.]

ARGUMENT.

Appellants have the temerity to refer only in part to the Special Master's opinion. We direct the court's attention to the whole thereof. [Tr. pp. 68 and 69.] They deliberately set out a portion thereof in such manner as to give a wrong complexion to the situation.

Appellants produced as a witness D. H. Culver, who testified as to certain real estate values of the bankrupt and admitted on *voir dire* that he had made no appraisal of this property in 1930, being the year the financial statements were made. He was testifying about values in 1933 and at a time when this country was engulfed in the most collossal depression the world has ever known. The fallaciousness of the witness' figures are apparent from the worth placed by him on 15 acres at Downey [Tr. p. 57], which he testified was worth $30,000.00, when the bankrupt had paid between $37,500.00 and $40,000.00 for it in 1925 or 1926 and had encumbered it by a first mortgage for $30,000.00 and had borrowed $15,000.00 additional in 1929 from the Associated Oil Company, secured by a second encumbrance thereon. [Tr. p. 60.]

The bankrupt testified he honestly believed the properties set forth in the financial statements to be worth the appraised value, as therein set out, basing this belief upon his experiences in the real estate business, in which such business he had been engaged for many years, and also had secured independent appraisals from others. [Tr. p. 47.]

The Special Master was well aware of the devastating effect the economic depression had upon the bankrupt's

property and refused to attach particular weight to the testimony of the witnesses produced by the objecting creditors, who testified as to property values and the methods employed by them. [Tr. pp. 35, 39 and 59.] The Special Master was the best judge of the credibility of witnesses and found as a fact that no false statements had been made by the bankrupt to secure credit from the objecting creditors or any of them. [Tr. p. 138.]

Appellants unfairly lay much stress upon a difference of some $43,000.00 in encumbrances upon property, as reflected by the Objecting Creditors' Exhibits 3 and 4. Objecting Creditors' Exhibit 4 purports to be nothing more nor less than a long-hand itemization of property at one time owned by the bankrupt, and prepared by the witness Smith. [Tr. p. 29.] Its accuracy may be attested to by Encumbrance 6 [Tr. p. 90], showing "Homestead, $10,000.00", an obvious error of $5000.00 [Tr. p. 4], which, together with the properties mistakenly included by the witness Smith, being items 4, 5 and 9, with the word "out" written thereafter [Tr. p. 90], showing encumbrances upon those respective pieces of property of $4633.13, $29,900.00 and $5747.47, or a total of $45,-280.60 (including the $5000.00 homestead error), said properties having been disposed of prior thereto and not used as a basis of credit. [Tr. pp. 30-31.]

The record shows that the bankrupt was continuously disposing of properties and acquiring other properties, so that the amount of encumbrances was a fluctuating one. Objecting Creditors' Exhibit 4 was a list of properties and reciprocal encumbrances at one time or another a part of the assets and liabilities of the bankrupt, not in any

sense a financial statement but on the contrary a mere recital of properties without in any way attempting to represent that they were contemporaneously owned, so that the addition of the values on the one hand or the encumbrances on the other is meaningless.

As the Special Master said, Exhibit 4 was no part of the financial statement. [Tr. p. 57.] The bankrupt was a member of certain syndicates [Tr. p. 31], and carried legal title to certain pieces of property in the names of others and by arrangement was not liable for the full amount of such indebtedness. [Tr. p. 31.] Contemporaneous deeds were delivered to him, which were held unrecorded and subsequently delivered to the trustee in bankruptcy upon his election. Appellants make a point of that fact. The bankrupt was the actual owner, which the objecting creditors admit. This presents an anomalous situation. They do not claim that he was not the owner of said property nor that he failed to account therefor in any way. Neither the Special Master nor the District Court found anything irregular with such an arrangement.

With reference to the claim, on which appellant puts considerable accent, that the bankrupt omitted from the financial statement (Exhibits 1 and 2), the $17,000.00 litigation which subsequently resulted in a judgment against him, it is to be observed that no objection is made by appellants to his failure to include in the financial statement an existing judgment in the sum of $256,-

162.20, with interest from July 11th, 1929, against the party who was suing him, and which larger judgment arose out of the same subject matter. [Tr. p. 14.] As hitherto mentioned, the bankrupt regarded the smaller litigation as being no more than a species of offset against the larger judgment in his favor, and he testified: "He owed me; I didn't claim I owed him." [Tr. p. 33.] In other words, in this cross litigation, the balance was heavily in the bankrupt's favor, and his explanation of the omission of the $17,000 litigation (which had not ripened into a judgment, while the $256,162.20 litigation had already ripened into a judgment in *his* favor) is perfectly consistent with innocence and good faith. So thought the Special Master and the United States District Judge.

> "To defeat a discharge on the ground that a bankrupt omitted obligations from a financial statement made by him, it is necessary to show either expressly or impliedly that he knew the obligations existed and could be enforced against him."
>
> *In Re Maaget,* 245 Fed. 804.

It is to be further observed that the bankrupt had a one-third interest in the Conservative Petroleum Company [Tr. p. 45], and did not include his oil holdings in the financial statements. [Objecting Creditors' Exhibits 1, 2 and 3, Tr. p. 48.] In speaking of his net worth, as shown by the financial statements, the bankrupt testified,

"Well, if my oil holdings were worth anything, I considered I was worth even more than that, and it did not include that, did not include those." [Tr. pp. 48-49.] In other words, the bankrupt wanted to be perfectly honest in making out the financial statements and did not include his oil holdings therein.

No part of the indebtedness owing to the objecting creditors was incurred by the bankrupt. It is all indebtedness of the Conservative Petroleum Company, a corporation. The indebtedness guaranteed by the bankrupt to the objector State Oilfields Supply Company was pre-existing at the time the financial statement, Exhibit 3, was given and no material or credit were furnished thereafter by that objector. [Tr. pp. 45 and 46.] Consequently there was no consideration therefor. Baash-Ross Tool Company, the other objector, to whom Exhibits 1 and 2 were given (Exhibit 2 being made out as more detailed information was required) did not rely upon them, as before any material was furnished or credit extended, it made an independent investigation of the credit standing of the bankrupt and examined the properties set out therein. [Tr. pp. 45 and 46; Opinion of Special Master, Tr. p. 69.] The other objectors do not contend false statements were made to them to secure money or credit.

False statements by a bankrupt set up to prevent bankrupt's discharge, must have been relied upon in relinquishing property or extending credit.

> *Bank of Monroe Nebraska v. Gleason,* 9 Fed. (2nd) 520.

Appellate Courts Will Not Reverse Conclusions of a Special Master When Evidence Is Conflicting.

The findings of a Special Master or a referee, who has had the advantage of hearing the witnesses testify and observing their demeanor, which findings have been approved by the District Court, are conclusive upon the question of fact-finding and will not be disturbed, unless clearly erroneous.

> *Arenz v. Astoria Savings Bank* (C. C. A. 9), 281 Fed. 530;
>
> *In Re Eilers Music House* (C. C. A. 9), 270 Fed. 915, 925;
>
> *Carstens v. McLean* (C. C. A. 9), 7 Fed. (2nd) 322;
>
> *Withers Bros. v. Foley* (C. C. A. 9), 6 Fed. (2nd) 126.

"When matters are referred to a master or referee to make findings of fact, such findings are conclusive on petition for review or exceptions, unless not supported by sufficient evidence or contrary to law, and if the findings depend upon the credibility of witnesses, or are existent with any aspect of the evidence, they should be upheld."

> *In Re Fackler,* 246 Fed. 864.

"Where the referee's finding is not a plain mistake and has been affirmed by the district court, it will not be disturbed."

> *John Schmitt's Sons v. Shadrach,* 251 Fed. 874; 164 C. C. A. 90; writ of error dismissed, *Schmitt v. Shadrach,* 248 U. S. 538.

"Findings of the master, approved by the district court, should not be overthrown on review, unless there is obvious error therein."

S. L. Collins Oil Co. v. Central Trust Co., 18 Fed. (2nd) 474.

"A decree based upon the report of a special master who heard the evidence will not, in case of conflict, be disturbed on appeal."

Parker v. Ross, 234 Fed. 289.

"Findings of special master, upheld by trial court, based on conflicting evidence will not be disturbed, particularly where another finding disposing of appellant's contention was supported by evidence."

Emerson v. Fisher, 246 Fed. 642.

"The findings of the commissioner of the district court on an issue of fact approved by such district court will be regarded on appeal as, in effect, 'successive and concurrent decisions of two courts in the same case', and will not be disturbed."

Simpson's Patent Dry Goods Co. v. Atlantic & E. S. Co., 108 Fed. 425; writ of *certiorari* denied 183 U. S. 697.

"So far as it depends on conflicting testimony, or on the credibility of witnesses, or so far as there is any testimony consistent with the findings, a master's report must be treated as unassailable."

Westinghouse Electric & Mfg. Co. v. Wagner Electric Mfg. Co., 28 Fed. 453.

"Findings of a master concurred in by the trial court will stand, unless some obvious error has in-

tervened in the application of the law or a serious mistake made in the consideration of the evidence."

Crawford v. Neal, 144 U. S. 585;

Mercantile Trust Co. v. Chicago P. & S. T. L. Ry. Co., 147 Fed. 699;

Lasscell Land & Lbr. Co. v. Wilson, 236 Fed. 322;

City of Memphis v. Postal Tel. & C. Co., 164 Fed. 600.

As was held in *Bank of Monroe Nebraska v. Gleason,* 9 Fed. (2nd) 520, the burden is upon the objectors to establish facts relied upon to prevent the bankrupt's discharge, and also: (a) False statement relied on to prevent bankrupt's discharge must have been made with knowledge of its falsity; (b) Bankrupt's fraudulent intent in making false statement relied upon to prevent discharge must be proved; and (c) False statement by bankrupt set up to prevent bankrupt's discharge must have been relied on in relinquishing property or extending credit.

In the case at bar the evidence showed that the objectors opposing bankrupt's discharge did not extend credit or faith of any kind upon the bankrupt's financial statement, but knew the true state of his affairs.

Reply to Argument of Appellants.

An examination of the appellants' authorities, on the facts and issues with which they were dealing, discloses that none of appellants' cases deal with a situation similar to the instant case. In each and every case cited by appellants, the report of the special master was upheld, except in the following two cases:

(1) *Morimura Co. v. Tabach,* 279 U. S. 24, where the court is very careful to say that the master made no findings of fact in reference to the precise issues, and

(2) *Swift v. Fortune,* 287 Fed. 491, where the bankrupt admitted his wrong but attempted to justify his position by saying he forgot to include in his financial statement the obligations in question and also listed property in the financial statement he did not own, which together with the inconsistent statements he had made under oath at the meeting of creditors led the court to conclude that the evidence showed the bankrupt knowingly and wilfully made false statements to secure credit.

We respectfully submit that the report of the Special Master and its confirmation thereof by the United States District Court should be affirmed.

Frank H. Love,
Solicitor for Appellee.

Abrahams & Love,
Of Counsel.

No. 7325.

United States
Circuit Court of Appeals
For the Ninth Circuit. 13

Baash-Ross Tool Company, State Oilfields Supply Company, Standard Pipe and Supply Co., A. D. Mitchell, Frances Hargrove and Juanita Cook,
Appellants,

vs.

Ralph L. Stephens,
Appellee.

PETITION FOR REHEARING.

RAPHAEL DECHTER,
Stock Exchange Bldg., 639 S. Spring St., L. A.,
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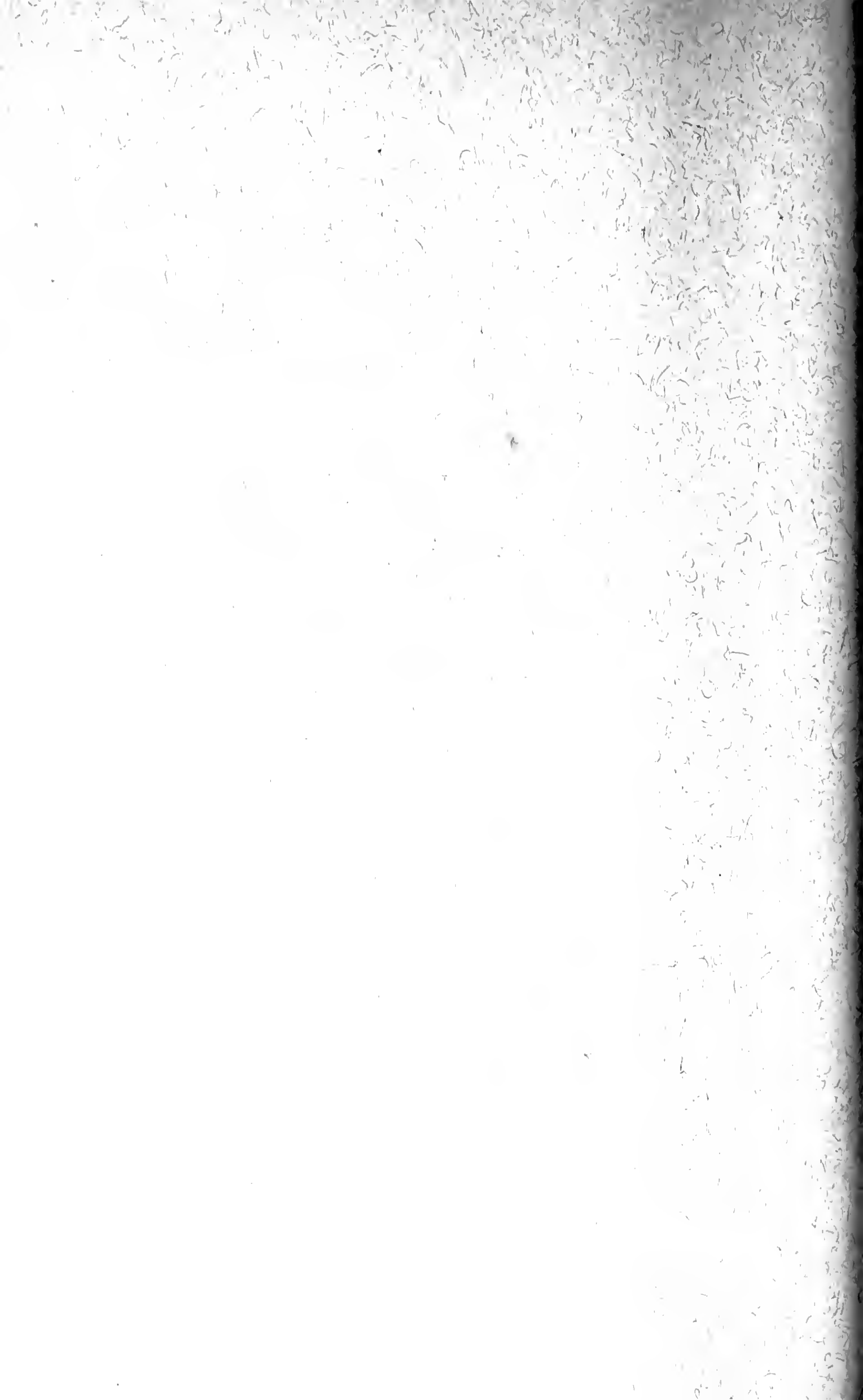

No. 7325.

United States Circuit Court of Appeals

For the Ninth Circuit.

Baash-Ross Tool Company, State Oilfields Supply Company, Standard Pipe and Supply Co., A. D. Mitchell, Frances Hargrove and Juanita Cook,

Appellants,

vs.

Ralph L. Stephens,

Appellee.

PETITION FOR REHEARING.

Come now the appellants above named and petition the above court to grant a rehearing from its decision as filed on November 26, 1934, affirming the order of the United States District Court granting a discharge to the appellee and bankrupt, and as grounds for rehearing specify the following:

I.

That said decision is directly contrary to the uncontradicted evidence.

II.

That the statement contained on pages 3 and 4 of the opinion, to-wit, "without taking up these different statements and reports in too much detail it might well be observed that Exhibit 2 purported to show the financial condition of the bankrupt on September 1, 1930, and that Exhibit 4 was a statement of his affairs at a time not less than five months thereafter, and an inspection of the two statements reveals several differences, some decreases, some increases, in the corresponding items thereof. These differences would seem to clearly indicate that in the bankrupt's affairs much transpired during the interim between the two statements, and that by reason thereof a comparison of the statements is of little assistance in ascertaining the truth or falsity of the items set forth in Exhibit 2," is directly contrary to the uncontradicted evidence in the record.

Statement of Facts in Support of Above Grounds.

At the time of the oral argument before the above court it was admitted that the evidence disclosed at page 62 of the transcript was uncontradicted that the statement that the assets and liabilities designated as Exhibit 4 in evidence and as Exhibit A for identification before it was received in evidence, showed the same condition of assets and liabilities as set forth on Objectors Exhibit 2. At that time appellants in their argument were stopped by the court, when the court's attention was directed to the fact that the encumbrances as shown on Exhibit 4 totaled $114,568.37 instead of $70,897.00, or a difference of $43,671.37. The court stated that it desired to hear from

the appellee to explain such difference. When appellee was unable to explain such difference the court permitted appellee twenty minutes time while it listened to another case to satisfactorily account for such difference, at the end of which time appellee failed to satisfactorily convince the court and thereupon the court gave appellee and appellant time in which to prepare a supplemental brief. In such supplemental brief appellee again failed to account for such differences of $43,671.37 in the encumbrances, whereas, on the other hand, appellant distinctly showed in his supplemental brief as well as in the original briefs that all of the property set forth on Objecting Creditors Exhibit No. 4 had been acquired prior to September 1, 1930, the date of the financial statement designated as Objecting Creditors Exhibit No. 2.

In addition, if the court will refer to page 30 of the transcript the court will find the following:

TESTIMONY OF RAPHAEL DECHTER.

The document, Exhibit "A" for Identification, was produced from my records, having been given to me by the bankrupt when I examined him in Mr. Moss' Court in the private room of the court reporter, Mr. Olson. The notations in ink on said document are in my handwriting. [Rep. Tr. p. 14.]

Whereupon said document was admitted as Objecting Creditors Exhibit 4.

TESTIMONY OF RALPH L. STEPHENS.

Bankrupt resumed. [Rep. Tr. p. 14.]

The item of $250,400.00 on Exhibit 4, covering real estate, stocks, bonds, etc., corresponds to the same item shown on statement to the Baash-Ross

Tool Company under the item of real estate, stocks and bonds in the amount of $266,859.00.

A. Yes, but you received this notation here as to business conditions when they were different, and depreciation on stocks or on a deal of real estate, foreclosure or something might have made that difference in there. [Rep. Tr. p. 14, line 18.]

The item of $70,897.00 represents encumbrances on item 8, which includes the real estate shown in said statement to the Baash-Ross Tool Company. The item: "Encumbrances on land, $114,568.37" represented encumbrances on real estate shown on Objecting Creditors Exhibit 4. The real estate shown on Exhibit 4 included property in the names of other persons. The item on page 3 of the statement to the Baash-Ross Tool Company, being Objecting Creditors Exhibit 2, "Long Beach Boulevard frontage" corresponds to lots 187 and 188, etc., on Exhibit 4, and is set up as of the value of $85,000.00, with encumbrances of $29,900.00 and was included in statement, Objecting Creditors Exhibit 2.

Also on page 62 of the transcript the appellee and the bankrupt testified that at the time he started in dealing with Baash-Ross Tool Company and when he went into the oil business in Venice all of these encumbrances had been placed on all of these different properties (referring to Exhibit 4). In other words, the above uncontradicted evidence shows that the statement of the court to the effect that "much may have transpired between the time of the giving of the financial statement, Exhibit 2, as of September 1, 1930, and the making of the statement, Exhibit 4," does not find any support anywhere in the record, but is as aforesaid, directly contrary to the evi-

dence in the record that all of the encumbrances on the bankrupt's property had already been placed thereon when he started dealing with Baash-Ross Tool Company and when he had gone into the oil business in Venice, and as shown by the supplemental brief, reference to which is hereby made, all of the properties mentioned on Exhibit 4 had been acquired prior to the date of the giving of this financial statement, Exhibit No. 2.

On page 6 of appellant's supplemental brief, it is pointed out that the encumbrances on Lot 1, Tract 1290 designated as the Downey property and Lots 187 and 188, etc., Tract 3233 designated as the Long Beach Boulevard property [See also Tr. p. 90] were $41,940 and $29,900, respectively, or $71,840 without taking into consideration the other nine parcels of real estate. On page 60 of the transcript the bankrupt testifies that he bought Lot 1, Tract 1290 in 1926, and on page 61 of the transcript that he bought Lots 187 and 188, Tract 3233 in 1929, also stating that the properties were encumbered as above. On page 62 of the transcript the bankrupt testified as to the other properties, to wit: Lots 16 to 22, Tract 3209, encumbered for $3,000 and Lot 47, Tract 3722, San Vincente encumbered for $1347.76, both of which properties he states were encumbered and purchased in like manner prior to 1929 and then adds that all these encumbrances on all these properties, referring to all of the properties on Exhibit 4 were encumbered at the time he started in dealing with the Baash-Ross Tool Company and when he went into the oil business in Venice, which would be prior to September, 1930; yet on the financial statement given by him to the Baash-Ross Tool Company and to the State Oilfields Supply Company, Exhibits 2 and 3, he shows

only encumbrances of $70,897.00 when the encumbrances on only the four parcels above mentioned total $76,187.76, without considering the other five parcels also heavily encumbered. In addition to the general statement contained on page 62 that all of his properties were subject to the encumbrances shown on Exhibit 4 prior to September of 1930, we find specific mention by the bankrupt in the record of other properties so encumbered in addition to the four parcels above mentioned. On page 32 of the transcript the bankrupt testifies that the Inglewood lot on the financial statement, Exhibit 2, corresponds to Lots 132 and 133, Tract 6794, shown on Exhibit 4; that they were acquired in March of 1930 and were encumbered at said time in the amount of $2500.00; at page 85, being financial statement, Exhibit 2, the bankrupt states that all of his property is encumbered. On page 33 the bankrupt testifies that the properties designated as Orange Grove on Exhibit 2 is the same as the Azusa property designated as the SE¼ of the NW¼ of SW¼ of Section 2, Township 1, South Range 10, West Azusa, which property is encumbered to the extent of $6,000. On page 22 of the transcript the bankrupt also testifies that the Southgate lots, as well as Lot 47, Tract 3722, being the one-half acre mentioned in Exhibit 2 were included in Exhibit 4. Unfortunately the exact description of the Southgate lots was not secured at the time. However, on page 51 the bankrupt, on cross-examination, by his own counsel, testifies that Lot 12 of the Claremont Tract mentioned on Exhibit 4, as well as other properties were included in the financial statement Exhibit 2, which latter property was encumbered to the amount of $7,000. These additional specific instances so testified to by the bankrupt show further encumbrances of $15,500 or a total of $91,687.76, all

specifically mentioned by the bankrupt as encumbrances and as included in the financial statement, Exhibit 2, outside of the general statement that all of his properties were encumbered as shown on Exhibit 4, when the statements, Exhibits 2 and 3, were given.

The unexplained discrepancy in the encumbrance of $43,671.37 constituted the principal ground set forth by appellants for a reversal and we still contend that it is the principal ground. We have heretofore defied appellee to explain or account for the failure to set forth the difference in said encumbrances on the statements which induced the appellants to give the bankrupt credit. To date the appellee has failed to account for such difference in the encumbrances and unless the court is going to indulge in a surmise as is contained in the opinion that something might have happened in the interim when the evidence shows that nothing did happen in the interim, we feel that justice requires that a rehearing be granted and that the order of the District Court be reversed.

While it is true that a person may in good faith overestimate the value of his property, yet he cannot under such decisions as *Firestone v. Harvey,* 174 Fed. 574, make a statement recklessly without an honest belief in its truth and that a grossly exaggerated valuation will be suggestive of fraud. While we do not primarily base our grounds of reversal upon these over-valuations, when the same is taken into consideration with the unexplained difference in the encumbrances as actually existed and as set forth on the statements, Exhibits 2 and 3, we cannot help but feel that the valuations were so grossly over-estimated as to be in the language of *Firestone v. Harvey, supra,* suggestive of fraud. For instance, the Long Beach Boule-

vard property, which was valued at $85,000.00 in the financial statements was purchased by the bankrupt for $46,000.00 in 1929 and 1930. This court can take judicial notice of the fact that since 1929, and long before said time, real estate values had been gradually decreasing in value and that there has not been a rise in values since 1929. Yet, in making his statement to the appellants, he values said property at $85,000.00, almost an increase of one hundred per cent. What is the explanation of this remarkable increase? We submit there is none which would justify the $85,000.00 value.

We feel that the foregoing coupled with the other attendant circumstances show that the bankrupt was wilfully fraudulent. For example on page 37 of the transcript we find a mention of three different attachments suits for substantial amounts, in addition to the Feinstein suit of $17,000 already filed at the time of the giving of the financial statements, Exhibits 2 and 3, and of which no mention is made in said financial statements by the bankrupt [Tr. p. 28]; also the fact that the bankrupt on the eve of the attachment by the Baash-Ross Tool Company made a transfer to his secretary's brother of his automobile for $1500, supposed to be evidenced in cash, and that although he had three bank accounts, he testified that he did not deposit said money in any bank, as well as the fact that he continued to drive said car after said transfer in like manner as before [Tr. p. 42]; also the fact that in his income tax return for the year 1930 no mention is made of the sale of said automobile, although losses on other transfers are specifically mentioned, but on the contrary the bankrupt takes deduction for the depreciation on the car as if he still owned it [Tr. pp. 92 and 98]; also

on page 63 the bankrupt testifies that he owned $13,000 worth of street bonds which he pledged to the Petroleum Equipment Company, but of which he made no mention in his statement, although he owned such bonds before October, 1930; also the fact that in addition to having all of his real property in other people's names, he also had his country club membership in a dummy's name [Tr. p. 64]; also the fact that the bankrupt turned over no books or records of any kind to the trustee [Tr. p. 66].

The court must remember that since the amendment of 1926 that the requirement of the intent for the purpose of obtaining credit was eliminated and that under the act as it now reads the obtaining of money or property on credit or obtaining an extension or renewal of credit by making a materially false statement regarding his financial condition is all that is required. In this connection we feel that the language of the court in its opinion on page 6 that the fact that the bankrupt in his financial statement did not set forth the fact that all of his stocks were pledged was only improper, we contend that this was a material omission making his statement false. We also wish to state that there is evidence in the record showing what the stocks and bonds were pledged for. On page 41 of the record appears the fact that the Emsco stock, and the City National Bank stock had been pledged to the Union Indemnity Company. On page 30 appears the fact that the notations in ink on Exhibit 4 were made by counsel for the appellants at the time he was examining the bankrupt. The court will observe on pages 90 and 91 the notation opposite the Emsco Derrick & Equipment Company stock that it was put up as security in Feinstein suit for $17,500.00. In other words, such stocks were put

up with the Union Indemnity Company as collateral for the execution of a release of attachment bond and all of said stocks were sold and retained by the Union Indemnity Company after the judgment had become final by Mr. Feinstein, leaving the Union Indemnity Company with an unsecured claim against the bankrupt. Yet, as shown on page 40 of the transcript, there was nothing anywhere on the financial statement, Exhibits 2 and 3, to show that any of said stocks had been pledged.

The court also loses sight of the fact that the bankrupt specifically stated that he did not list in any of his financial statements his personal obligations. [Tr. p. 28.] The court also apparently overlooks the uncontradicted evidence in the record that whereas the bankrupt listed furniture and equipment of the value of $5269.15 on Exhibit 2 that he stated on page 43 of the record that he never had that much furniture.

The court in its opinion justifies the omission of any mention of the suit by Feinstein for $17,500.00 by reason of the fact that the bankrupt did not also include an alleged judgment of $256,000.00 against Feinstein. If this reasoning is to be pursued to its logical conclusion, it will be a constant justification by bankrupts that while they omitted certain items material in their financial statement, they were more than over-balanced by items that they did not include. The purpose of a financial statement is to enable the credit man to investigate each of the items and if the bankrupt had included both items in his statement, the credit manager would have ascertained that the suit for $17,500.00 was for money advanced for and on behalf of the bankrupt, whereas the judgment for

$256,000.00 was a default taken on one cause of action after demurrer had been sustained to two causes of action in an action trying to recover damages for alleged violation of the bucket-shop laws of California and which action, when it came to trial after the judgment had been set aside, bankrupt's own counsel admitted had no merit and was merely an attempt to offset the claim of Feinstein by a frivolous action.

We respectfully contend that merely the failure to account for the difference of $43,000.00 in the encumbrances, in other words the under-statement of his encumbrances in the amount of $43,000.00, is sufficient in itself to warrant a rehearing and a reversal of the order of the court, and we respectfully so petition.

Respectfully submitted,

RAPHAEL DECHTER,
Attorney for Appellants.

Certificate of Good Faith

The undersigned does hereby certify that the above petition for rehearing is well founded, is made in good faith and not for the purpose of delay, and in the opinion of counsel said petition is meritorious.

R. DECHTER.